271 No. 199

~~No. 1171~~

~~No. 275 Misc.~~

Office-Supreme Court, U.S.
FILED
NOV 29 1962
JOHN F. DAVIS, CLERK

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

LEONARD ROYAL AIKEN,

Appellant.

APPENDIX TO APPELLANT'S BRIEF

UNITED STATES COURT OF APPEALS
FILED
NOV 6 1961
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

CARSON DEWITT BAKER
Attorney for Appellant
55 Liberty Street
New York, N. Y.

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Docket Entries Re Leon Aiken

UNITED STATES v. 12. JOHN DOE ("LEON")
Count 8, t/n Leonard Royal Aiken T. 21, Secs. 173-174, U.S. Code Conspiracy to violate the narcotics laws.

3-3-61	Filed Indictment.
3-3-61	Warrants of arrest ordered for Granville Smith, Nick Holiday and John Doe, a/k/a "Leon" Bicks, J.
3-7-61	John Doe a/k/a Leon—Bench Warrant Issued as to all three defendants on 3-3-61.
5-13-61	John Doe, a/k/a Leon, true name—Leonard Royal Aiken—Defendant brought to court on warrant. Arraigned in chambers, following his arrest on warrant. Bail fixed at $20,000. Remanded in lieu of bail. Weinfeld, J.
5-15-61	Leonard Royal Aiken—Pleads Not Guilty. Bail of $20,000. fixed on 5-13-61 by Judge Weinfeld continued in the same amount. Defendant remanded in lieu of bail. Dimock, J.
	Leonard Aiken—Filed notice of appearance by Morris Somers, 1501 Broadway, New York City.
5-22-61	Leonard Aiken—Filed warrant dated 3-3-61, and entered marshal's return. Warrant executed 5-13-61.
5-22-61	Leonard Aiken—Filed remand, dated 5-13-61. Weinfeld, J.
6-13-61	Trial begun before Judge Skelly Wright as to defendants . . . , Leonard Aiken . . . On

	motion of the Government the following defendants . . . Leonard Aiken Ordered Remanded. Wright, J.
	—A-E—
	Trial continued and concluded—Defendants, Leonard Aiken motion for a mistrial—Granted —Wright, J. Defendants remanded.
6-15-61	Trial begun before Judge Wright with a jury, as to defendants . . . Aiken.
6-16-61	Trial Continued.
6-19-61	Trial Continued.
6-20-61	Trial Continued.
6-21-61	Trial Continued.
6-22-61	Trial Continued.
6-23-61	Trial Continued, on motion of the Government—Bail fixed as to the following defendants . . . Leonard Aiken—Bail fixed at $30,000. All defendants—remanded in lieu of bail. Wright, J.
6-26-61	Trial Continued.
6-27-61	Defendant Aiken moved to dismiss count 8—Denied.
6-28-61	Trial Continued.
6-29-61	Trial Continued and concluded. Jury Verdict: Defendant . . . Aiken Guilty on count 8. Jury Polled. Defendants . . . Aiken move to set aside the verdict and for a new trial. Denied. J. Skelly Wright, J.

Docket Entries Re Leon Aiken

6-29-61	Leonard R. Aiken—Filed judgment Thirteen (13) years on count 8 at a place of confinement to be designated by the Attorney General of the United States remanded Bail pending appeal is fixed at $50,000. J. Skelly Wright, U.S.D.J.
6-29-61	Issued commitment and copies.
6-29-61	Filed information charging defendant Leonard Royal Aiken with a prior narcotic offense. Memo endorsed:—The defendant admits that he is the person previously convicted as charged in the within Information. Wright, J.
6-30-61	Leonard Royal Aiken—Filed Notice of Appeal to U.S.C.A. from a judgment of conviction (7-5-61) mailed copy to Warden, Federal Detention Headquarters, New York City. $5. —A-E—
7-5-61	Leonard Aiken—Filed remand, dated 6-13-61 J. Skelly Wright, J.
7-5-61	Filed remand; dated 6-23-61. J. Skelly Wright, J. Defendant released on bail 6-23-61. E. N. Bishopp, U.S. Comm'r.
Jun 30-61	Leonard Royal Aiken filed Notice of Appeal to U.S.C.A. from Judgment of conviction (7-5-61). Mailed copy to Warden Federal Detention Headquarters, New York City.

Indictment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

—v.—

WINSTON MASSIAH, JESSE COLSON, MITCHELL ANFIELD, GRANVILLE SMITH, NOEL MAXWELL, WILLIAM ADAMS, JOHN HENRY PURRY, CLARENCE WHITE, NICK HOLIDAY, ICKY THORN, SYLVIA FERRIS, JOHN DOE, a/k/a "LEON", meaning thereby to describe a Negro male of medium complexion, with black hair and a medium build, approx. 40 yrs. old, approx. 5'9" tall, and weighing approx. 165 lbs.,

Defendants.

The Grand Jury charges:

On or about the 6th day of May, 1958, in the Southern District of New York, WINSTON MASSIAH, JESSE COLSON and MITCHELL ANFIELD, the defendants, did unlawfully, wilfully and knowingly bring on board, and have in their possession and control on board a vessel of the United States, to wit, the S.S. Santa Maria, while engaged on a foreign voyage, a narcotic drug, to wit, approximately 3 pounds, 8 ounces and 256 grains of cocaine, not constituting a part of the cargo entered in the manifest or part of the ship's stores.

(Title 21, United States Code, Section 184a and Title 18, United States Code, Section 2.)

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SECOND—COUNT

The Grand Jury further charges:

On or about the 6th day of May, 1958, in the Southern District of New York,

WINSTON MASSIAH, JESSE COLSON and
MITCHELL ANFIELD,

the defendants, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 3 pounds, 8 ounces and 256 grains of cocaine,

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code.
Title 18, Section 2, United States Code.)

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THIRD—COUNT

The Grand Jury further charges:

On or about the 18th day of June, 1956, in the Southern District of New York,

GRANVILLE SMITH,

the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 50 grams of cocaine,

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code.)

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FOURTH—COUNT

The Grand Jury further charges:

On or about the 18th day of June, 1956, in the Southern District of New York,

JOHN HENRY PURRY, CLARENCE WHITE and
NICK HOLIDAY,

the defendants, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 50 grams of cocaine,

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and

brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code.)

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FIFTH—COUNT

The Grand Jury further charges:

On or about the 31st day of July, 1956, in the Southern District of New York,

GRANVILLE SMITH,

the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 25 grams of cocaine,

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code.)

Indictment

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SIXTH—COUNT

The Grand Jury further charges:

On or about the 31st day of July, 1956, in the Southern District of New York,

NOEL MAXWELL,

the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug, to wit, approximately 25 grams of cocaine,

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited.

(Title 21, Sections 173 and 174, United States Code.)

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SEVENTH COUNT

The Grand Jury further charges:

On or about the 6th day of May, 1958, in the Southern District of New York,

WINSTON MASSIAH,
JESSE COLSON and
SYLVIA FERRIS,

the defendants, unlawfully, wilfully and knowingly did purchase, possess, dispense and distribute a certain narcotic

drug, to wit, approximately 3 pounds, 8 ounces and 256 grains of cocaine,

in that the said defendants did not purchase, possess, dispense and distribute said narcotic drug in or from the original stamped package.

(Title 26, Sections 4701, 4703, 4704(a), 4771(a) and 7237(a), United States Code.)

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EIGHTH COUNT

The Grand Jury further charges:

1. From on or about the 1st day of January, 1956, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, WINSTON MASSIAH, JESSE COLSON, MITCHELL ANFIELD, GRANVILLE SMITH, NOEL MAXWELL, WILLIAM ADAMS, JOHN HENRY PURRY, CLARENCE WHITE, NICK HOLIDAY, ICKY THORN, SYLVIA FERRIS, and JOHN DOE, a/k/a "LEON", meaning thereby to describe a Negro male, of medium complexion, with black hair and a medium build, approximately 40 years old, approximately 5'9" tall and weighing approximately 165 lbs., the defendants, and Fadul Rene Harb Huasaff, Richard Roe, a/k/a "Rene", meaning thereby to describe a Caucasian male, of a light complexion with dark hair and a medium build, 35 to 45 years old, approximately 5'5" tall and weighing approximately 165 lbs., Amanda Huasaff, Helen Hoe, meaning thereby to describe the sister of Amanda Huasaff, a Caucasian female of a light complexion with dark hair and a medium build, approximately 53 years old, approximately 5'5" tall and weighing approximately 135 lbs., Paul King, James Barber, James Hunter, James Billips, Tony Gumbs, Joe Perry, Gerald Youngblood, Clyde Cadogan, Paul Washington,

Sonny Campbell, Arthur Conquist, Harold Hoe, meaning thereby to describe the brother-in-law of Amanda Huasaff, a Caucasian male, of light complexion with black hair and a medium build, approximately 55 years old, approximately 5'5" tall and weighing approximately 160 lbs., and George Goe, a/k/a "Canales", meaning thereby to describe a Caucasian male with an olive complexion, with dark hair and a medium build, 35 to 45 years old, approximately 5'8" tall and weighing approximately 150 lbs., named as co-conspirators but not as defendants, and divers other persons to the Grand Jury unknown, did unlawfully, wilfully and knowingly combine, confederate, conspire and agree together and with each other to commit certain offenses against the United States, to wit, to violate Sections 173 and 174 of Title 21, United States Code.

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2. It was a part of said conspiracy that the above-mentioned defendants, and their co-conspirators, would unlawfully, wilfully and knowingly import and bring narcotic drugs, to wit, cocaine, into the United States, in violation of Sections 173 and 174 of Title 21, United States Code.

3. It was further a part of said conspiracy that the above-mentioned defendants, and their co-conspirators, would unlawfully, wilfully and knowingly receive, conceal, buy, sell and facilitate the transportation, concealment and sale of narcotic drugs, to wit, cocaine, the exact amount thereof being to the Grand Jury unknown, after said narcotic drugs had been imported and brought into the United States contrary to law, and knowing that said narcotic drugs had been imported and brought into the United States contrary to law, in violation of Sections 173 and 174 of Title 21, United States Code.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about June 18, 1956, the defendants GRANVILLE SMITH, JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY, had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, New York.

2. On or about July 31, 1956, the defendants GRANVILLE SMITH, WINSTON MASSIAH and JOHN HENRY PURRY had a conversation in a bar at 10th Avenue and 17th Street, New York, New York.

3. On or about July 31, 1956, defendant WINSTON MASSIAH had a conversation with co-conspirator James Barber aboard the vessel S. S. Santa Luisa.

4. On or about July 31, 1956, defendants NOEL MAXWELL and WINSTON MASSIAH had a conversation at 19 West 128th Street, New York, New York.

5. On or about July 31, 1956 defendants NOEL MAXWELL, WILLIAM ADAMS and WINSTON MASSIAH had a conversation at 19 West 128th Street, New York, New York.

6. In or about the month of August, 1956 defendants MITCHELL ANFIELD, JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, New York.

Indictment

7. On or about October 8, 1956 defendants NOEL MAXWELL, WILLIAM ADAMS and WINSTON MASSIAH had a conversation at 19 West 128th Street, New York, New York.

8. On or about October 10, 1956 defendants NOEL MAXWELL, WILLIAM ADAMS, MITCHELL ANFIELD and WINSTON MASSIAH had a conversation at 19 West 128th Street, New York, New York.

9. On or about October 11, 1956 defendants JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, New York.

10. On or about October 11, 1956 defendants CLARENCE WHITE, WINSTON MASSIAH and NICK HOLIDAY had a conversation at 19 West 128th Street, New York, New York.

11. On or about December 10, 1956 defendants JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, New York.

12. On or about December 10, 1956 co-conspirator James Hunter went to the vicinity of 8th Avenue and 16th Street, New York, New York.

13. On or about December 10, 1956 defendants MITCHELL ANFIELD, JOHN HENRY PURRY, CLARENCE WHITE and NICK HOLIDAY had a conversation in a building in the vicinity of 100th Street and Manhattan Avenue, New York, N.Y.

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14. On or about June 4, 1957 co-conspirator James Barber went to a bar in the vicinity of 8th Avenue and 16th Street, New York, New York.

15. On or about July 17, 1957 co-conspirator James Hunter went to a bar in the vicinity of 8th Avenue and 16th Street, New York, New York.

16. On or about July 31, 1956 co-conspirator James Barber went to the vicinity of 8th Avenue and 16th Street, New York, New York.

17. On or about August 26, 1957 co-conspirator James Hunter went to the vicinity of 8th Avenue and 16th Street, New York, New York.

18. On or about November 18, 1957 co-conspirator James Billips went to the vicinity of 17th Street and 9th Avenue, New York, New York.

19. On or about December 30, 1957 co-conspirator James Billips went to the vicinity of 9th Avenue and 17th Street, New York, New York.

20. On or about February 10, 1958 co-conspirator James Billips went to a bar in the vicinity of 9th Avenue and 17th Street, New York, New York.

21. On or about May 6, 1958 defendant WINSTON MASSIAH was in possession and control of a quantity of adhesive tape aboard the vessel S.S. Santa Maria.

(Title 21, United States Code, Sections 173 and 174.)

MORTON S. ROBSON
United States Attorney

.....
Foreman

Judgment and Commitment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. 61 Cr. 206

[SAME TITLE]

On this 29th day of June, 1961 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of unlawfully, wilfully and knowingly conspiring to violate the narcotics laws (Title 21, sections 173 and 174, U.S. Code) as charged in Count 8

—AND—

The defendant LEONARD ROYAL AIKEN, duly represented by counsel, having admitted that he is the same person previously convicted on ONE separate Federal Narcotics violation, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General of his authorized

representative for imprisonment for a period of THIRTEEN (13) YEARS on Count 8.

Bail pending appeal is fixed at $50,000.

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IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ J. SKELLY WRIGHT
United States District Judge
s/ HERBERT A. CHARLSON
Clerk

Notice of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Name and Address of Appellant:

LEONARD ROYAL AIKEN
Federal Detention Headquarters
428 West Street
New York City, N.Y.

Name and Address of Appellant's Attorney:

MORRIS SOMERS, Esq.
1501 Broadway
New York City, N.Y.

Offense:

Violation of secs. 173 and 174 of Title 21, United States Code.

Date of Judgment:

June 29, 1961.

Sentence:

13 years imposed following trial and conviction by jury.

Notice of Appeal

Now confined in Federal Detention Headquarters, 428 West Street, New York City, N.Y.

The appellant hereby appeals from the judgment of conviction and sentence thereon to the United States Court of Appeals, Second Circuit.

MORRIS SOMERS
Attorney for Appellant
1501 Broadway
New York City, N.Y.

Dated: New York, June 29, 1961

—1—

Excerpts From Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Cr. 206

[SAME TITLE]

Before:

HON. J. SKELLY WRIGHT, *D. J.*,

and a Jury.

New York, June 15, 1961,
10:30 o'clock a.m.

APPEARANCES:

ROBERT M. MORGENTHAU, Esq.,
United States Attorney,
for the Government;

By James G. Starkey, Esq.,
Assistant United States Attorney.

ROBERT J. CARLUCCIO, Esq.,
Attorney for Defendant Massiah.

—2—

EUGENE K. JONES, Esq.,
Attorney for Defendant Colson.

I. EDWARD POGODA, Esq.,
Attorney for Defendant Anfield.

Leon Ellis—for Government—Direct

JESSE ZASLAV, Esq.,
Attorney for Defendants Maxwell, Adams and Purry.

ABRAHAM SOLOMON, Esq.,
Attorney for Defendant White.

NORMAN ARCHER, Esq.,
Attorney for Defendant Thorn.

EARL MCHUGH, Esq.,
Attorney for Defendant Ferris.

MORRIS SOMERS, Esq.,
Attorney for Defendant Aiken.

Mr. Starkey: The Government is ready.
Mr. Solomon: The defendants are ready.

• • • • •

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New York, June 20, 1961
10:30 o'clock a.m.

• • • • •

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LEON ELLIS, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Direct Examination by Mr. Starkey:

Q. Mr. Ellis, have you been convicted of any crimes? A. Yes.

Q. Will you tell the Court and jury when and what crimes you have been convicted of? A. I was convicted for disorderly conduct in 1951, and policy, November 27, 1960.

Q. Do you know a man by the name of Jesse Colson? A. Yes.

Q. When did you first meet him? A. In '57.

Q. Did there come a time thereafter when you had a conversation with him about cocaine? A. Yes.

Mr. Somers: I object to that, your Honor, as distinctly leading.

Mr. Starkey: It's a preliminary question, your Honor.

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The Court: Don't lead your witness, please. I think the answer is already in, but don't lead any more.

Q. When did this conversation take place, this first conversation? A. Around about the fall of '57.

Q. And what did you say to Jesse and what did Jesse Colson say to you?

Mr. Pogoda: Can we have the place, if the Court please?

Q. Do you recall where this conversation took place? A. A. Yes. Jesse had a rented car, and it was in the car.

The Court: Where was the car?

The Witness: We was driving down the avenue, down Seventh Avenue.

Q. What was said by him and what was said by you on this occasion? A. I asked him, I said—

Mr. Archer: Your Honor, I would object to this line of questioning. Jesse Colson is not a party

defendant here in this matter, and I don't think this testimony should be elicited which would be binding

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upon these defendants.

The Court: That is overruled.

What did he say to you and what did you say to him?

The Witness: I asked him—I heard he was bringing in cocaine, and I would like to work for him so I could make a few dollars.

He said, "You don't want to mess with nothing like that."

I said, "Yes, I would like to make a few dollars."

He said, "If you get a customer, give me a call and it will let you know."

By Mr. Starkey:

Q. Did there come a time when you discussed this conversation that you just described with someone else? A. Yes.

Q. Who was that? A. A fellow named Tillie.

Q. And what was said between you and Tillie?

Mr. Pogoda: That is objected to, if the Court please. Neither he nor this fellow Tillie are mentioned in the indictment here, and this is purely

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hearsay.

The Court: I will hear from the government.

Is Tillie alleged to be a conspirator?

Mr. Starkey: The government offers proof that he was, your Honor. He is not designated in the indictment as such.

Mr. Somers: I object to that.

Mr. Pogoda; How can we be prepared to meet something that is not in the indictment as part of the conspiracy?

The Court: Did you know of Tillie at the time the indictment was drawn?

Mr. Starkey: No, we did not, your Honor.

The Court: Are you suggesting that this is new evidence that was developed since the indictment?

Mr. Starkey: Yes, your Honor. However, if the Court—

The Court: I will sustain the objection. I think you are going a little far.

By Mr. Starkey:

Q. After you had this conversation with Tillie, did there come a time when you again talked to Jesse? A. Yes.

Q. Where did you speak to him? A. I called him from 225th Street.

Q. And when did this take place? A. This was November or December of '57.

Q. Now, after the conversation with Tillie, when you called up Jesse Colson, what did you say and what did Jesse say? A. I told Jesse that I had a man who was interested in some cocaine, and he asked me how much money he had, and I told him that he had $300. I said, "But the man wants to come to the house with me to receive the coke."

And Jesse said, "That is no good." He said, "If the guy can't trust you, just tell him to forget about it."

Q. Now, after that, did you have a conversation with Tillie again? A. Yes.

Mr. Carluccio: Your Honor, I don't want to interrupt, but I just want to know, when he speaks about Tillie, can he give, if possible, Tillie's real name. I know of a Tillie and I want to know if it is the same one he is talking about.

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The Court: If the government knows, tell him.

By Mr. Starkey:

Q. Do you know Tillie's full name? A. No, I don't know his full name.

Mr. Carluccio: Fine. Thank you.

Q. Now, you had a conversation with Tillie again after the phone call? A. Yes.

Q. And did there come a time after that conversation when you saw Jesse? A. Yes.

Q. What happened on that occasion and where did you see him? A. I went to his house and told him how much money I had, and he gave me a package of cocaine.

Q. How much money did you have? A. $300.

Q. From whom had you received it? A. I received it from Tillie.

Q. Was there any other conversation up in Jesse Colson's apartment during this time that you are talking about? A. He told me that the man would be satisfied

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with this package because it is pure cocaine.

Q. Do you know how much was in the package? A. No, I couldn't—I think it was between six and eight spoons.

Mr. Carluccio: Objection. He is supposed to testify as to his knowledge and not what he thinks it is.

Leon Ellis—for Government—Direct

By Mr. Starkey:

Q. Did you have any conversation with Jesse as to how much was in the package? A. No. He told me it was half a piece.

The Court: Half a piece?

The Witness: Half an ounce.

Q. Now, after you left Jesse's apartment, what did you do? A. I came back to the bar and picked up Tillie.

Q. Where did you go? A. We came down to the Woodside Hotel.

Q. Where is that located? A. That is 141st Street, on Seventh Avenue.

Q. Did you have a conversation with Tillie there? A. Yes. We went—

Q. Without giving the conversation, where did you go

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after the conversation? A. We went around to 141st Street, between Seventh and Eighth Avenue.

Q. And what did you do there?

Mr. Pogoda: I will object to it, if the Court pleases. It is not one of the overt acts charged in the indictment. And then, again, whatever his actions were with Tillie aren't binding upon these defendants.

The Court: That is overruled. I think the government will connect it up.

Proceed.

By Mr. Starkey:

Q. What did you do? Did you stay on the street on 141st Street, or did you go into a building? A. We went into

an apartment building and went up a couple of flights to a person's house.

Q. What did you see when you got there? A. I saw a lady, and me and Tillie went in a small room in the apartment.

Q. Who was carrying the package? A. Tillie was carrying the package.

Q. Now, there was no one up there but the lady when you went up there? A. Yes.

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Q. Did there come a time when someone else arrived? A. Yes.

Q. Who was that? A. Leon.

Q. Now, a man you know—

Mr. Somers: What is the time, please? I would like the date.

The Court: Give the time.

Q. When did this occur, as nearly as you can fix the date? A. It was the last of November or the first few weeks in December of '57.

Q. Now, what happened when Leon arrived? Was there a conversation?

The Court: Who is Leon?

The Witness: That person right over there.

The Court: Where?

By Mr. Starkey:

Q. What man have you just pointed to? A. The first man in the second row behind the bar there.

Q. How is he dressed? A. He's got on a suit, a white

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shirt and tie.

Mr. Starkey: May the record show that the witness has identified the defendant Leonard Aiken.

By Mr. Starkey:

Q. Was there any conversation when he arrived? A. Yes.

Q. What was said and by whom? A. He asked Tillie did he get the stuff.

Q. What did Tillie say? A. Tillie told him, "Yes."

Q. What happened then? A. Tillie gave it to him, and he was measuring it out.

Q. Was there any conversation at that time? A. He said it was a little short and asked me could I get in contact with my man. And I told him no, I couldn't contact him no more tonight.

He said, "Forget about it then."

Q. What happened after that? A. Well, Tillie asked Leon was he going around to '36th Street. He answered, "Yes." And he said, "Why don't you let Schoolboy take it around for you?"

Q. Who is Schoolboy? A. I am Schoolboy by nickname.

Q. What did the defendant Aiken say? A. He asked me would I take it. I said, "Yes."

Q. What happened then? A. And he gave me $15 and I met him around '36th Street.

Q. You say "'36th"? A. 136th Street, between Seventh and Lenox Avenue.

Q. And did you go there by yourself? A. Yes.

Q. What did you do with the package when you got there? A. I saw him in the car and I gave it to him and kept walking.

Mr. Carluccio: Who is "him"?

The Witness: Leon.

Q. Now, did the defendant Aiken ever complain to you thereafter that what he received was not cocaine?

Mr. Somers: I object to that, your Honor.

The Court: Just a minute, please. Don't lead your witness. Rephrase the question.

Mr. Starkey: Your Honor, it is not by way of

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leading. The government offers to show the absence of the conversation rather than show a conversation. I merely asked the question to receive a yes or no answer.

The Court: It still can be leading. But, in any event, the answer is no to the question? Is that what you are trying to show, that there was no such conversation?

Mr. Starkey: That the defendant never complained that it was not cocaine.

The Court: Did you ever have any further discussion with Leon Aiken about this particular cocaine?

The Witness: No.

The Court: All right. Take the witness.

By Mr. Starkey:

Q. Incidentally, Mr. Ellis, are you familiar with the appearance of cocaine? A. Yes.

Q. What does it look like? A. Sugar.

Q. Did you see the contents of this package? A. Which package are you speaking of?

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Q. The one that you delivered to the defendant Aiken? A. Yes.

Q. What did it look like? A. Coke. It was in a sugar form.

Q. Did there come a time thereafter when you again had a conversation with Jesse Colson about what had occurred, about what you just testified? A. On the question that I just answered?

Q. Well, about the same subject matter. A. Yes, about coke, yes.

Q. When did this conversation take place? A. This was the early part of January of '58.

Q. What did Jesse say to you and what did you say to him? A. Jesse told me that he had a package of coke, I think it was—it was 10 to 12 ounces, and he said he would like to get rid of it in one lot, and he told me if I could find a nice customer, that he would let him have it at the wholesale price.

Q. What did you say? A. I said, "Okay, I will look around and then see what I can do."

Q. Did there come a time when you discussed this cocaine

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with anyone? A. Yes.

Q. With whom did you discuss it? A. I discussed it with Leon.

Q. Where did this discussion take place? A. 136th Street.

Q. What did you say and what did he say? A. Well, I asked him, I said, "My man has got a package of coke," I said, "and he said it's approximately 12 ounces," and I asked him was he interested in it if I could get it for him.

Q. What did Leon say? A. Leon said, "Yes, I will take the whole thing if it is pure."

And I told him, I said I didn't know exactly how pure it was but I would see Jesse and find out how much it was and how much did he want for it.

Q. And did you talk about price and quantity with Jesse Colson? A. Yes.

Q. What did you do after that? A. I came back and told Leon about how much it was and how much he wanted for it.

Q. And what did you say to him? A. I told him, I said,

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"My man says it's pure, and it's approximately 12 ounces, between 10 and 12 ounces, and he would let you have it for $5,000."

Q. Was there any further conversation at that time? A. He told me to come by tomorrow night, the following night, a little after dark.

Q. And did there come a time when you saw him again? A. Yes.

Q. When was it and where? A. It was the next night, on 136th Street.

Q. Who was there at that time? A. I saw him in his car.

Q. What was the conversation, if any? A. And he told me that—

The Court: Who is "he"?

The Witness: Leon.

The Court: All right.

A. He told me that "Here are $5,000," and, you know, he said he was trusting me this time, but the next time it's going to be—he give me the money and receive the coke, because either he is doing all the trusting and nobody else is doing any trusting.

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And I took the $5,000 and met Jesse Colson on 140th Street and Seventh Avenue, and we left from 140th Street and went to 94th Street and Broadway.

Q. Do you know who lived there at that time? A. No, I didn't know who lived there.

Q. Did you go into a building there? A. Yes, we went into a building.

Mr. Somers: Who is "we"?

The Witness: Me and Colson.

A. We went into a building and went a couple of flights upstairs and went into an apartment, and Icky was there.

Q. Icky? A. Yes.

Q. Do you know what Icky's last name is? A. Yes.

Q. Do you see Icky in the courtroom? A. Yes.

Q. Will you point him out, please? A. The last person on the end.

Mr. Starkey: May the record show that the witness has identified the defendant Thorn.

Q. What happened after you and Jesse Colson entered

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the apartment? A. Well, when we got into the room, Icky—Jesse told Icky to ask the man for the coke. And Icky said, "How much?"

Jesse told him, "All of it."

Icky told Jesse that—he said, "Man, you can't let him have all of it because I got a man coming over in a few minutes, he wants five pieces."

Well, Jesse said, "I got the cash money right here now."

Icky told Jesse, he said, "I could cut it and you could almost double your money."

And Jesse said, "Yes, that is true."

"I will tell you what I will do, Schoolboy," he said, "I will give you half of the jar for your man and half of the jar for you, Icky, for your man."

And so Jesse went into the room, he was counting the money out on the bed, and me and Icky was in the small kitchen, like a dinette, on the table and Icky was measuring the coke from one jar to the other. And after he got it measured, Jesse came in and taped the jar up and gave me the jar of coke for myself, and $2,500 back. He told me to tell my man that that was the best he could do because he had his other boy who had a customer.

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Q. What did you do then? A. I took the jar and the $2,500 and came back to 136th Street.

Q. And what happened at 136th Street? A. I saw Leon in the car and gave him the jar of coke and the $2,500 back, and explained why it was like that.

Q. What did you say? A. I told him, I said, "My man had another customer for another boy of his and all he could give me was half the jar."

Q. Did there come a time thereafter when you saw Leon and Jesse Colson together? A. Yes.

Q. When was that? A. That was around about the third week in January of '58.

Q. And will you tell the Court and jury what happened on that occasion and how it came about, if you know?

Mr. Pogoda: May we have a place?

The Court: Where was it?

The Witness: It was 138th Street and Lenox Avenue, in a small bar.

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The Court: Whose bar?

The Witness: It was a small bar.

The Court: You don't know the name of the bar?

The Witness: I don't know the name of the bar.

By Mr. Starkey:

Q. Do you know how it happened that they got together? A. Yes. I told Jesse what Leon said, that he wasn't going to send his money—he don't know what is going to happen to his money, and I said he wasn't going to trust me any more with his money.

And Jesse said, "Well, he seemed like a big man." He said, "I would like to meet him."

I said, "Okay, I will try to set it up for you" the next day to meet him.

Jesse said, "Okay."

So I went and told Leon what Jesse said, and he said, yes, he would meet him.

So I told him I would bring him down to him the next day. I said, "I will be down about 2:30 or 3 o'clock."

He said, "Okay."

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And I got Jesse the next day and brought him down to the bar, and I left him in the bar and went over to '36th Street and saw Leon and told him where we were. And he came over a little later, after, and I introduced him to Jesse.

Q. What did you say when you introduced him to Jesse? A. I told Jesse, I said, "This is Leon, and this is the man that bought the stuff."

Q. Did you hear any conversation thereafter? A. No. They were sitting in a booth and I was having a beer.

Q. Now, did there come a time thereafter when you left New York? A. Yes.

Q. When was that? A. That was January 28, 1958.

Q. What was the reason why you left New York? A. My mother passed away.

Q. Where did you go? A. I went to Chicago and Mississippi.

Q. How long were you away? A. I was away until February 23rd, I got back to New York.

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Q. After you got back, did there come a time when you saw Jesse? A. Yes, I called him up and told him that I was back in New York, and he said he would be down to see me in a few minutes, he had—he wanted to talk to me. And he came down about half an hour later.

Q. What was the conversation you had with him at that time? A. I asked him how was he getting along.

He said, "I don't have any more coke because me and Duke sold the last to Leon while you was away."

Q. While you were away? A. Yes.

The Court: Who is Duke?

The Witness: That is the person in the white shirt.

Mr. Starkey: May the record show that the witness has identified the defendant Mitchell Anfield.

Q. Did there come a time after you returned when you had a conversation with Duke? A. Yes.

Q. What was said—

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Mr. Pogoda: May we have a date and a place?

By Mr. Starkey:

Q. How soon after you returned did you see him? A. It was February 23rd.

Q. And will you tell the Court and jury how it happened that you went to see him? A. Well, Jesse told me, he said, Marty was mad at him because he wouldn't let him use his car no more, you know. He said it hurt him because they had been so close for so many years, and he told me to go down to his house and see what he was angry about.

Q. Did you do so? A. Yes. I went down to his girl friend's mother's house, and he was down there.

Q. Where was this? A. I think it is near Fifth Avenue, 118th Street, 117th Street, somewhere in there.

Q. Did you have a conversation with him at that time? A. Yes.

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Q. With Duke? A. Yes.

Q. What was said? A. I asked Duke what was the matter with him and Jesse. And Duke told me, he said Jesse shouldn't have did him that way. He loaned him the car and he parked the car—Duke parked the car—and while the car was parked Jesse came back and moved the car and took it home, and was calling him up, asking him where was the car at and "When are you going to bring the car," and he had the car all the time.

And Duke said, "Yes," he said, "he had been cheating me in the business with money and coke all the time while we was in business." He said, "I am just fed up with him. I don't want to be in business with him no more."

Q. Now, did there come a time after this conversation when you talked to Duke about a package? A. Yes.

Q. When did that take place? A. I am not very sure on this, but I think it was in March of—

Q. Of '58? A. '58, yes.

Q. Where did this conversation take place? A. Well,

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Duke came up to 140th Street, on the avenue, and saw me, and tole me he had a package for my man, and he asked me if I want to go around to '36th Street with him.

Q. What did you say? A. I said, "Okay."

We went around to '36th Street and we was looking for Leon—

Mr. Somers: I object to that, your Honor, who he was looking for. It is a conclusion.

The Court: Well, why were you looking for Leon?

The Witness: Because Duke had a package for him.

The Court: How did you know Duke had a package for him?

The Witness: He told me.

The Court: Duke told you that?

The Witness: Yes.

The Court: Overruled.

By Mr. Starkey:

Q. Did you see Leon there when you went to 136th Street? A. No, not right then, but about an hour or an hour and

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a half later.

Q. Where did you spend the hour or hour and a half? A. I was right up over the club. Duke had a friend up

there, she was a girl, and we went up there and stayed up her house about an hour or an hour and a half.

Q. Then what happened? A. Then I came back downstairs and I saw Leon and I told him that my man was looking for him.

He said, "Yes?" He said, "Where is he at?"

I said, "Upstairs there, over the club."

He said, "Go upstairs and get him and I will be sitting in the car."

Q. What did you do then? A. I went upstairs and got Duke, and we came back to the car.

Then we pulled off and Duke gave Leon the package and Leon gave him some money. I don't know how much money it was, what was in the package.

Q. What happened after that? A. He put us out and me and Duke went down to his girl friend's mother's house, and he gave me $75, and I came on back uptown.

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Q. He gave you $75? A. Yes.

Q. All right. Now, did there come a time in the following summer when—

The Court: Who gave you the $75?

The Witness: Duke.

Q. Did there come a time the following summer when you talked to Jesse on the telephone? A. Yes.

Q. How closely can you fix the date? A. It was either late May or early June. That is the closest I can fix it.

Q. And what was said on that occasion? A. He asked me that he wanted to make a telephone call out of the country, and he wanted to know could I find somebody that he could use the phone because he couldn't use his and because he was tapped.

Mr. Carluccio: What year?

The Court: Tell us the year.

The Witness: '58. 1958.

The Court: And the date, as close as you can remember it?

The Witness: It was either late May or June.

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The Court: All right, take the witness.

By Mr. Starkey:

Q. And what was it that he said? A. That his telephone was tapped and he couldn't make any calls on it out of the country.

Q. And what did you do? A. I asked my godmother about letting Jesse make a long-distance call on the telephone, and she said, "Yes, Okay," as long as they will pay the bill it would be all right.

And I said, "Okay."

So then I got Jesse the following day, the next day, or a couple of days later, and he made the telephone call to Chile.

Q. Did you hear any part of the conversation? A. I heard it, but he was speaking in Spanish, so I didn't understand it.

Q. Did there come a time thereafter, when he talked to you, when he talked to you about a delivery? A. Yes.

Q. When was that? A. That was around the first or second week in September.

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Q. Where did the conversation take place? A. We was either in his car or in Carter's Corner.

Q. That is a bar—Carter's Corner? A. Yes.

Q. What did he say to you? A. He told me that he was expecting a shipment in, and he wasn't going to call me no more until the date the people was going to arrive, and when I get the telephone, just tell him "Hello" and "How do you feel?" and hang up, and get a cab and come straight on up to his house.

Q. Was there any conversation about where the people would be coming from? A. No. Well, I know where they was coming from. I know they was coming in from Chile.

Mr. Somers: Your Honor, I move to strike that out, sir.

The Court: How did you know that?

The Witness: Because from the telephone bill, that that is where he was calling the people.

The Court: How do you know that the telephone call to Chile had any connection with the package?

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The Witness: Well, he was telling me all the time that is what the call was for.

The Court: Colson was telling you that?

The Witness: Yes.

The Court: Overruled.

By Mr. Starkey:

Q. All right. Did there come a time thereafter when he did call you? A. Yes.

Q. How much later? A. Well, about the last part of September.

Q. And what did he say when he called you? A. You mean when he called me?

Q. Yes. A. He said, "How do you feel?"

And I said, "How is everything?"

He said, "Okay."

So I hung up the telephone and took a cab on up to his house.

Q. Where did he call you? Where were you at that time? A. I was in Carter's.

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Q. When you got up to Jesse Colson's apartment, what did you see? A. When I got up there, me and him was in the house by ourselves, and he was looking out the side window, he was trying to see which way the people were going to come from.

Q. And what happened after that? A. About five minutes later, Jesse went outside for something, and he went outside and he came back in the house and he said, "This is sure is a foxy old lady. She is sitting out there on the benches with the other people," and he went over and told her to come on into the house, everything was all right.

Q. And what did you then see? A. She had a large bag, and her and Jesse was talking in Spanish; and then she started to bringing these packages out and giving them to Jesse. It was cellophane bags, and she was giving them to Jesse, and Jesse was giving them to me, and he told me to go into a small room, and we had two large jars, and I started cutting the tops off them and pouring the coke into the jars.

Q. Was there any conversation at that time? A. Yes.

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When we got just about finished dumping it, so he gave me a sample and he told me to take it to Leon and tell him everything was all right.

Q. What did you do then? A. So I got the sample and I came downtown and went to 136th Street looking for Leon.

Q. Did there come a time when you found him? A. Yes.

Q. Did you have a conversation with him? A. Yes.

Q. What was said? A. I gave him the sample and told him everything was all right.

And he asked me, "How much?"

I told him I didn't know exactly how much it was but it was a lot. I said that he could get anything that he wanted.

Q. Was there any further conversation? A. Yes. He told me to come by and see him the following night.

Q. Did you do so? A. Yes, I did.

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Q. Where? A. 136th Street.

Q. Did you have a conversation on that occasion? A. I asked him, "How is everything?"

And he told me that he wasn't quite ready yet, that he wanted to see Jesse and talk about the price.

Q. What did you do then? A. I went back and told Jesse to get in contact with him.

Q. Did there come a time when you talked to Jesse about whether or not he had? A. Yes.

Q. When did you talk to him about it? A. It was a couple of days, three or four days, after the shipment arrived.

Q. And what did Jesse say to you and you to him at that time? A. Jesse told me that he had talked to Leon and he had arranged the price with him; he was going to get a kilo of cocaine the following night.

Q. The following night? A. Yes.

Q. Was there any further conversation at that time? A.

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No. He told me he would come downtown and see me the

next day, and he would get together on a meeting place, where he was going to meet me.

Q. Did there come a time when delivery was made, if you know? A. Yes.

Q. When did that happen? A. That was about the fifth or sixth night after it arrived.

Q. Where was delivery made? A. 136th Street.

Q. Were you there at that time? A. Yes.

Q. Where did you begin from, or where did you start from on that occasion? A. Up in Jesse Colson's house on 225th Street.

Q. You went there? A. Yes.

Q. And you saw Jesse? A. Yes.

Q. Did you have a conversation with him? A. He was just finished measuring out the coke from one jar to a smaller jar.

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Mr. Somers: I will have to object to the descriptive work "coke" because there has been no testimony at all as to what the stuff actually was. He is referring to this as cocaine, but the record is absolutely barren of any evidence that this was in fact cocaine.

The Court: Do you know cocaine when you see it?

The Witness: Well, I could taste it. I can taste it, but you could get five or six substances in the form of a powder.

The Court: Anyway, they were referring to this as coke?

The Witness: Yes.

The Court: That is the word they used in connection with it?

The Witness: Yes.

The Court: Objection overruled.

By Mr. Starkey:

Q. Did you ever take a freeze from this? A. Yes.

Q. Will you tell the Court and jury what a "freeze" is? A. A "freeze" is similar to a test. You could freeze your

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gums with it, and the length of time that it stays froze, it gives you an idea of about what kind of quality it is, what kind of percent it is. It is similar.

Q. When you say "freeze," will you tell what you mean by the sensation? A. You get a cold feeling here. In other words, your lips would be numb and your gums would be numb.

Q. And you did test this—

Mr. Carluccio: Objection. There is no testimony that he took a freeze.

Mr. Starkey: That is what I am asking the witness.

Mr. Carluccio: It is a leading question.

The Court: I think the witness already testified that he took a freeze.

Mr. Carluccio: He said, "I could have taken it."

The Court: On this particular shipment, did you take a freeze?

The Witness: Yes.

The Court: I think he already testified to this.

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All right. Take the witness.

By Mr. Starkey:

Q. Now, he was parceling the package out and had just finished doing so when you arrived, you said? A. Yes, he was just finished.

Q. What did you do then? A. So he taped the package up, he taped the jar up, and he put it in a brown bag, came out and got in his car, and came down to '36th Street and Seventh Avenue, got out, parked the car and walked down the middle of the block, right in front of the club.

Q. What club is that? A. That is—it's a club there. It is a skin joint and it's a club.

Mr. Pogoda: I didn't hear that.

Mr. Starkey: A skin joint.

The Court: Do you want to explain that?

The Witness: That is a place where they play cards, skin. It's a game.

Q. What happened then when you arrived there? A. Well, me and Jesse, we was walking down the street, I had the package in my hand, we was walking down '36th Street—that is 136th Street. We saw Leon parked in the

car, went over to the car, and Jesse said, "Everything is all right."

Leon asked him, he said, "Do you have the package?"

He said, "Yes, the Schoolboy got it."

He told me, "Give it to Mersh."

Q. "Give it to Mersh"? A. Yes.

The Court: Who is Mersh?

The Witness: He is a fellow who was around the block there.

The Court: Who told you to give it to Mersh?
The Witness: Leon.

By Mr. Starkey:

Q. And what did you do then? A. I gave the package to Mersh and told Jesse I would see him a little later and kept walking.

I walked on back to Carter's Bar. He told me he would pick me up there.

Q. Did you see where he and Leon went? A. No.

Q. Now, did there come a time when you saw Jesse

again? A. Yes.

Q. Did you have a conversation with him? A. He picked me up in the bar and—that was in Carter's Bar, 139th Street and Seventh Avenue—about, I would say, 20 or 30 minutes later.

Q. Did you have a conversation with him? A. Yes. He told me he got the payoff.

Q. What happened after that? A. We went up to his house and we was counting the money.

Q. What money is that? A. The money what he got from Leon, what he told me.

Q. Do you know what the amount was? A. I don't know. I thought it was $14,000. I am not quite sure of the amount because I was putting the hundreds and fifties and twenties and the tens together, and Jesse was counting the hundreds.

Q. Do you know whether or not Jesse said anything about the amount? A. Jesse later on—me and Jesse had a conversation. He told me it was $12,000.

Q. $12,000? A. Yes.

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Q. Did there come a time thereafter when you again talked to Jesse about a delivery?

Mr. Carluccio: Your Honor, on that last incident, was a date and month or year fixed?

Mr. Starkey: The end of September, the witness testified.

Mr. Carluccio: September of '58?

The Court: When did this happen, this last kilo deal?

The Witness: It was in September, 1958.

The Court: September, 1958?

The Witness: Yes.

The Court: All right. Take the witness.

By Mr. Starkey:

Q. Now, did there come a time thereafter when you again talked to Jesse about a delivery? A. Yes.

Q. When did you have the conversation and where? A. It was in his ear, and he told me that—

The Court: When?

The Witness: When?

The Court: Yes.

The Witness: It was in August, the following month.

Q. The following what? A. It was in August.

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The Court: This was before?

The Witness: No, this was after September. It was in August.

The Court: What month comes after September?
The Witness: August—no, October, I am sorry.

By Mr. Starkey:

Q. What did he say to you? A. He told me that he was expecting another shipment in, and he told me just to repeat, do the same thing what I did before, when he makes the call, and when he makes the call, just say, "Hello. How do you feel?" and come on up to his house.

Q. And did there come a time thereafter when he made the call and you went up to his house? A. Yes.

Q. What happened when you arrived there? A. When I arrived there there wasn't nobody there but Jesse. And I was in the apartment about five or 10 minutes and there was a knock on the door, and Jesse let a man and a woman in.

Q. Did you recognize either of them? A. Yes. I recog-

nized the woman.

Q. Where had you seen her before? A. Because she brought the stuff in before with another elderly lady. She was with the lady.

Q. She was one of the two women that arrived with the first shipment? A. Yes.

Q. Incidentally, did you hear the language that she spoke? A. Yes, they spoke in Spanish.

Q. What happened when the man and woman entered the apartment? A Jesse was talking to them in Spanish, and the lady had a large bag, and she started out giving Jesse the bags, and he was giving them to me and I was taking them in the back and putting them in a large jar.

Q. Did you have any conversation with Jesse at that time? A. As we was putting them in the jar, Jesse was

taking the bag and he was freezing the stuff, you know, and he said, "Look at all this coke."

Q. Was there any other conversation? A. And when we got it jarred up, he gave me a sample and he told me

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to take it to Leon and tell him that everything was all right.

Q. Did you see Leon thereafter? A. Yes.

Q. Where? A. 136th Street.

Q. When? A. It was about the last of October.

Q. Now, did you have a conversation with him at that time? A. Yes. I gave him the sample and told him that Jesse said that everything was all right.

Q. And what did he say, if anything? A. He told me he would see me later because he had to get some money up.

Q. And did there come a time when you saw him again? A. Yes; I think it was a couple of nights after.

Q. Where? A. At 136th Street.

Q. What was the conversation? A. He told me that he was still waiting because he hadn't got the money up yet and he told me to tell Jesse that he wanted to see him,

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to come by; he wanted to talk about the price with him.

Q. And did you have any further conversation with him? A. With who?

Q. With Leon. A. No, not at that time.

Q. Did there come a time thereafter when you talked to either Jesse or Leon about the delivery? A. It was about a couple of days after Jesse told me that he was going to come downtown and he was going to make a move the next night.

I told him, "Okay," I would be around the bar.

And he came and got me that afternoon, and we was together, we was riding around, and he told me that he was going to take Leon a kilo tonight.

Q. Did you see Jesse that night? A. Yes.

Q. Where did you see him? A. We didn't leave each other. After we was riding around, we didn't leave each other. We went to stash—

The Court: Tell the jury what "stash" is.

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The Witness: "Stash" is the place where we used to have the cocaine at.

By Mr. Starkey:

Q. Where was that? A. It's on Park Avenue.

Q. And what happened then? A. We went up there and measured the coke out, measured kilos, spoonweight, and then me and Jesse left and came to '36th Street and Lenox Avenue.

Q. And what did you see there? A. Jesse told me to wait across the Avenue in front of the Harlem Hospital, that he was going into the block to see if he could see Leon and, when he give me the signal like this, to come on across the street.

So he was in the block about five or 10 minutes, and he gave me the wave to come across the street, and as I got across the street I saw Leon coming from down '36th Street, and him and Colson—and Jesse and Leon was talking, and as I got near Jesse, he told me to give him the jar, so I gave the jar to Leon.

Q. You gave the jar to Jesse and he gave it to Leon? A. Yes.

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Q. What happened then? A. And Leon told Jesse, he said he had to go some place to get the money.

Q. Do you know where they went? A. There was the three of us.

Q. You went too? A. Yes.

Q. Where was it? A. It was down near 122nd Street; it was on Morningside or Manhattan Avenue.

Q. What happened there? A. Leon got out and went into the building, and he was in there about 15 or 20 minutes, and he came out with two brown bags, and he gave them to Jesse and told him that all the money was there.

Q. What happened after that? A. We came back up Seventh Avenue and put Leon out at 136th Street and went up to Jesse's house with these two bags of money and we starting counting the money out.

Q. How much was there? A. Well, I thought it was $14,000, but Jesse told me after that it was only $12,000.

Q. Now, what was the appearance of this substance that

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was delivered? A. It was the same as it was before.

Q. Did you test any of it? A. Yes.

Q. Did it numb your gums? A. Well, the freeze on that lot wasn't as strong as the other.

Q. Did you ever have a conversation thereafter with Jesse about the quality? A. Yes.

Q. How long afterwards? A. It was about a week, a couple of weeks.

Q. What did you say and what did he say? A. He told me, he said, "Everybody is complaining." He said that the coke that they sent in wasn't nothing but garbage, and he said he was going to send down and ask them to send him some of his money or send him some more coke in.

Q. Did he say who had complained? A. He told me everybody had complained.

Q. Did he say whether or not—did anyone complain to you? A. No.

Q. Did he say whether or not anyone had said it was

—600—

not cocaine? A. No.

Q. Well, no what? A. It was coke. Nobody didn't say it wasn't coke, but it wasn't up to par. It wasn't pure, you know. The purity wasn't there.

The Court: We will take a five-minute recess.

(Short recess.)

Mr. Starkey: Now I ask that these pictures be marked Government's Exhibits 3, 4 and 5 for identification.

(Government's Exhibits 3, 4 and 5 marked for identification.)

By Mr. Starkey:

Q. Now, Mr. Ellis, I show you Government's Exhibit 3 for identification and ask you if you recognize the person in that picture. A. Yes.

Q. Where and when have you seen her before? A. I saw her up Jesse's house.

Q. Was she one—when was it that you saw her up there? A. This was the last of September.

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Q. What happened on that occasion? A. When she brought in the coke.

Q. And that was the first delivery? A. Yes.

Q. All right. I show you Government's Exhibit 4 for identification and ask you if you recognize her. A. Yes.

Q. Where and when have you seen her before? A. She came on the same delivery with the other lady.

Q. On that same first delivery? A. Yes.

Q. Did you see her thereafter? A. Yes.

Q. When? A. On the second delivery.

Q. She was there then, too? A. Yes.

Q. I show you Government's Exhibit 5 for identification and ask if you recognize that man? A. Yes.

Q. Where and when have you seen him before? A. Well, he came—him and this lady came together the last time

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when the shipment of coke came in.

Mr. Starkey: I will offer these in evidence.

With the Court's permission, I will proceed while counsel examine the photos.

The Court: Yes.

Mr. Pogoda: I shall object to the introduction of these photographs, if the Court please, unless these persons on the photographs are mentioned in the indictment as defendants or co-conspirators.

Mr. Starkey: If Mr. Pogoda is asking for the identity of these people, I will be happy to give him that information.

Mr. Pogoda: They are being offered so at this point they are irrelevant. We have not tied them into the case.

The Court: That is overruled. The witness testified that they are the ones who brought in the cocaine. That is overruled.

Mr. Pogoda: If they are not defendants or co-conspirators, they have no part in this case.

The Court: Well, it is not necessary that they be named, but if you want the names, I think counsel

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will give you the names, or perhaps he will develop that later. But the names do not have to appear in the indictment itself. The indictment names certain people, and then names "other persons to the grand jury unknown"; at least usually they do. But in any event perhaps the identity of these particular persons will be disclosed.

This witness says that they are the people who brought the cocaine in.

Mr. Starkey: If counsel will accept my representation in this area, I will be happy to give him that.

The Court: I don't think they are interested in your representations on this.

Mr. Starkey: All right, your Honor.

By Mr. Starkey:

Q. Did you receive any money from Colson as a result of your assistance on these two deliveries? A. Yes.

Q. How much did you receive? A. I received 10 per cent.

Q. And how much was that? A. I got, on the first delivery, about $700. I owed Jesse money because he loaned

—604—

me $300 to go home when my mother died, and I owed him money, bar bills and things like that, money that I got from him. He always kept it down in a little black book.

Q. So you received the difference between what you owed him and 10 per cent of the price of the transaction? A. Yes.

Q. How much did you receive on the second occasion? A. I think I got approximately $1,100. I'm not quite sure, but it was in that range. I owed him some more money.

Mr. Starkey: Your Honor, I began questioning the witness after the recess without asking that the last question prior to the recess be reread.

The Court: Those notes are being transcribed.

By Mr. Starkey:

Q. After you returned to the apartment with money following the second delivery to Leon— A. Yes.

Q. —you said you and Jesse counted the money. A.

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Me and Jesse and the man on that picture was counting the money.

Q. The man in the picture, Government's Exhibit 5 for identification, or Government's Exhibit 5 now in evidence? A. Yes.

Q. What happened after that? A. After we got finished counting the money?

Q. Yes. A. After we got finished counting the money, Jesse was—he was counting out some money for the man and gave it to him. I don't know how much the money was. And the man asked Jesse to take him downtown, and we came out of Jesse's house and got in his car and we came downtown, and he left him off around 33rd or 32nd Street, around Broadway some place, around there, in that area.

Q. Do you know how much money Jesse Colson paid then? A. No, I don't.

Q. Did you have any conversation thereafter with Jesse Colson about the quality of the cocaine? A. Yes.

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Q. What was said? A. He told me that he was getting complaints by everybody that got the coke, and a lot of people was giving it back to him, and he said it wasn't nothing but garbage, you know. And he made a call to Chile, so he told me, and he told them to send him part of his money back or send him some more cocaine that is pure, because he is not going to lose all of his money on this deal.

Q. Do you know if he ever received an answer? A. Yes, he received an answer, and he got an answer that he should get some carbonate of soda.

Q. Bicarbonate of soda? A. Yes. And mix it, and it would bring the coke up to par.

Mr. Carluccio: I object. I don't know how he knew that he received an answer. He didn't read any Spanish letters or anything like that.

The Court: How did you know that?

The Witness: Jesse told me that the telephone call—that Jesse called down there, and he got it on the phone, and he told me.

The Court: Jesse told you?

The Witness: Yes. And I went and got the bicarbonate of soda from the drug store.

By Mr. Starkey:

Q. What did you do with it? A. We went over to where we had the cocaine stashed at, and we took an ounce and mixed a spoon of bicarbonate of soda in it and mixed it up.

Q. What happened after that? A. So we gave it a water test.

Q. A water test? A. Yes.

Q. What kind of a test is a water test? A. A water test, you get a glass of water, and take a pinch of cocaine and

let it fall in the water, and if the water stays clear, you got a good percentage of cocaine; and if it becomes cloudy, you got a bad percentage of cocaine.

Q. What happened with the water test on this occasion? A. Well, the water was cloudy and there was a film on the top, and Jesse said, "This still ain't no good. It's still just garbage. Get in contact with him again and tell him to send some money or more coke."

Q. Now do you know where the defendant Thorn was living at this time? A. Who?

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Q. Icky Thorn. A. Yes.

Q. Where? A. He was living in a hotel. I don't know exactly the street of the hotel, but it's in the area of 115th or 117th Street, up near Amsterdam, between Amsterdam and the park there.

Q. When did you next see the defendant Thorn, if you did see him, after this second large delivery? A. Well, I was over there, over to the hotel, say five or six times, or more.

Q. During what period? A. It was in October and November.

The Court: What year?
The Witness: '58.

Q. With whom did you go there, if anyone, during this period? A. I went there with Jesse.

Q. Did you ever hear any conversation between Jesse Colson and Icky Thorn? A. Yes.

Q. Will you tell the Court and jury what you heard?

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A. Well, Jesse asked Icky, "How is business going?"

Icky told him, he said, "The coke is going very slow, you know."

And Jesse told him, he said, "I've been going too slow, and I will have to take it back and sell it outright."

Icky told him, he said, "I am doing the best I can, you know." He said, "There's a lot of coke in town, and I have some big customers pretty soon and it will move then."

Q. About how many times did you hear such a conversation? A. Twice. I think it was about twice.

Q. Do you know whether or not Jesse received any money? A. Yes, he received some money both those times because he had a pad, and he had Icky's name on it. I don't know how much money it was, but Jesse always deducted what Icky gave him.

Q. Icky gave him money? A. Yes.

Q. On how many occasions did you see that? A. It was twice.

—610—

Q. Did you ever have any conversation with Jesse about what his arrangement was with Icky? A. Yes.

Q. What did he tell you? A. He told me "I was giving Icky cocaine on consignment."

Q. Now, did there come a time when you again saw the defendant Leon Aiken? A. Yes.

Q. When was that? A. Jesse told me—I think it was the last of October or the first of November, somewhere along that time—he told me, he said, "Go get Leon tonight at about 8 or 9 o'clock and bring him up to the hotel."

Q. When did this occur? A. About the last of October or early November. It was in that area of time. I don't know exactly what special date it was.

Q. And did you do so? A. Yes.

Q. You saw the defendant Leon Aiken? A. Yes.

Q. You saw him? A. Yes.

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Q. Where did you see him? A. I saw him at 136th Street, and I told him what Jesse said. And he asked me where Jesse was. I told him he was up to the hotel. So he said, "Okay."

So we got in a cab and went on up to the hotel. And as we was going up the elevator, Leon said, "Man, you mean your man is here?" He said, "Nothing hangs out here but a bunch of junkies. He should be scared of this place."

Mr. Pogoda: May we have the name of this hotel?

The Court: Can you give us the name of the hotel?

The Witness: No, I am not sure about the name, but I know specifically where it is.

The Court: Where is it?

The Witness: I don't know exactly the street, but I could go to it.

The Court: Just tell us as best you know where it is.

The Witness: It's, I think, between—there is the park there. I think the park is Mount Morris Park. I don't know exactly what the name of the park is,

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but it's right off the park. I think it's between Amsterdam and this park, and it's in the area of 115th Street and 119th Street. It's in that area.

The Court: And you say it is a hotel?

The Witness: Yes.

The Court: And you don't know the name of it?

The Witness: No; right offhand, no, your Honor.

By Mr. Starkey:

Q. When were you last there? A. I don't remember the last time I was there specifically.

Q. Well, does it refresh your recollection if I ask you whether you were there with Agent Murphy? A. Yes, sir. I was there, I think it was, last week, one night, with Agent Murphy. That was the last time I was there specifically.

Q. Now, the defendant Leon Aiken said that Colson should be afraid of that hotel? A. Yes.

Q. Was there any further conversation? A. Yes. We went on up to Icky's room, and Jesse and Leon was talking.

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And I think I went next door, there was a girl there that I was playing around with.

Mr. Somers: I can't hear this.

A. I said I went over to the next door, one of the little rooms there in the hotel, and there was a girl, a fat girl there, I used to tease around with every time I go up there with Jesse.

Q. Well, who was in the room when you left? A. Leon and Jesse.

Q. Did you see anything before you left? A. No, not before I left.

Q. What happened when you returned? A. When I came back in the room Jesse had a jar on the table and he was wrapping it with tape, and he told me he wanted me to take this down to '36th Street with Leon.

Q. Do you know what was in the jar? A. Not exactly, I didn't know what it was.

Q. What did it look like? A. It was a white substance.

Q. A white substance? A. Yes.

Q. Well, beyond that, can you describe it any more

—614—

closely? A. Well, it was a jar, a small jar about this high, and I would say about this wide, and I put it in a bag and took it down to 136th Street.

Q. Can you, besides being a white substance, tell the Court and jury what the texture was or anything more about its appearance? A. I could say what my idea that it was—

The Court: What did it look like?

The Witness: It looked like a white substance, the same thing that I had been handling all the time.

Q. The same appearance as the other two kilos? A. Yes.

Q. But no one specifically mentioned what was in the jar on this occasion? A. No.

Q. And you carried the jar with you? A. Yes.

Q. Where to? A. 136th Street.

Q. What did you do with it there? A. I gave it to a fellow that we call Mersh, who was standing up against the curb.

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Q. Who told you to give it to Mersh? A. Leon.

Q. Did you receive any money for this? A. No.

Mr. Starkey: If I can have the Court's indulgence for one moment.

The Court: Yes.

(Pause.)

Mr. Starkey: No further questions, your Honor.

Leon Ellis—for Government—Cross

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New York, June 21, 1961,
10:30 a.m.

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Mr. Starkey: I now call Leon Ellis for cross-examination.

LEON ELLIS recalled.

The Court: You have been sworn and you are under the same oath as you took yesterday.

Mr. Pogoda: I wonder, if the Court please, might we have the recess so that there won't be any interruption in the cross-examination.

The Court: All right, we will take a five-minute recess.

(Recess.)

(Jury present.)

Cross Examination by Mr. Carluccio:

Q. Mr. Ellis, what is your first name? A. Leon.
Q. Leon Ellis? A. Yes, sir.
Q. Mr. Ellis, you have a record, a criminal record?

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Mr. Starkey: Objection. This was brought out on direct, your Honor. I think there is no need to belabor it.

The Court: I will let him say it again. I would appreciate it if you would speed this up a bit. Tell him your record.

A. I was convicted on a disorderly conduct charge in '51, and again in '60 for numbers, for policy.

Q. That is all. A. Yes.

Q. And during the transactions you testified to on your direct examination how much would you approximate, how much money did you make in the sale and distribution of the items you described? A. How much I would approximate it?

Q. In total. A. I would say around about twenty two or twenty five hundred.

Q. Are you sure it wasn't more? A. Maybe it was more or maybe it was less.

Q. Would it be more around four to five thousand dollars? A. I wouldn't know.

Q. What do you do for a living? A. Orthopedic me-

chanic.

Q. What is an orthopedic mechanic? A. Well, we make shoes and arch supports, arm limbs, braces.

Q. It is spelled o-r-t-h-o-p-e-d-i-c? A. O-r-t-h-o-p-e-d-i-c.

Q. And for whom were you employed? A. Apex Foot and Health Products.

Q. How long have you been so employed? A. Approximately 11 years.

Q. What hours a day do you work? A. What hours a day I work?

Q. Yes. A. From 8:30 in the morning until 5 after 5 in the afternoon.

Q. How many days a week? A. Five days a week.

Q. And when did you stop working for this company? A. I got a leave of absence in July or August of '56.

Q. July or August of '56? A. Yes.

Q. That is when you stopped? A. I got a leave of absence to help my godmother.

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Q. So you were an orthopedic mechanic for ten years up to '56? A. Yes.

Q. And then you stopped and got a leave of absence? A. That's right.

Q. And you still are on a leave of absence? A. No.

Q. What are you doing now? A. I am now employed by Apex and I returned September 6th of last year.

Q. September 6th? A. I think September 6th or around in that part of it.

Q. So from July '56 to 9, '60, you were on leave of absence, isn't that so? A. Would you mind repeating that again?

Q. I am sorry. I might have made a mistake.

The Court: You were not in this orthopedic business from '56 to '60, is that right, you were on leave of absence?

The Witness: That's right.

Q. And you were employed during that time, you say, with your godmother? A. I wasn't employed. I would go

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in the store and help her out, in the cleaning store.

Q. You were not employed? A. No.

Q. How often would you go in the store? A. Every day I would go in the store for a period of time.

Q. How many days a week? A. Well, I couldn't say exact how many days a week I was going to the store. I would be in the store just about every day.

Q. Well, how many days is the store open? It's open Saturdays, isn't it? A. Yes.

Q. So it would be six days a week? A. Yes, I would say six days a week.

Q. And how many hours a day? A. I was in and out of the store. It wasn't no hours. I was in and out of the store. If something needed to be done while I was there I did it.

Q. Well, when you say something had to be done while you were there, what did you do there? A. What did I do?

Q. Were you a presser? A. No. I used to take orders.

Q. Take orders? What else? You mean when someone brought a garment in you would fill out the slip? A. Yes.

Q. Anything else? A. And I used to go around picking up orders from different people.

Q. You picked up orders? A. Yes.

Q. Anything else? A. Well, just general things around the cleaners, you know.

Q. And when you took the orders, and you wrote out the slip, did you also sign your name to the slip? A. No.

Q. Or put a number? A. No.

Q. You were going to say something, what was it? A. Well, let me tell you this, just like, these records, what was taken, at that time they were all destroyed.

Q. I didn't ask you whether the records were destroyed. I asked you when you made the slips out did you put your name down or was there some indication that you were the one who took the slip? A. No.

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Q. Would you write it out? A. Yes.

Q. Would you write the slip out? A. Yes.

Q. Would you be able to recognize your own handwriting? A. Well, yes.

Q. Where is that store? A. The store was 2363 Seventh Avenue.

Q. What is the trade name or the name it goes under? A. It was Eva's Laundry but it was under another name and I was working—helping out in the store. It was Pitts, but I was never writing out the orders there.

Q. I don't want to confuse you Mr. Ellis. I want to ask my question again so that you can give me that answer. What name was the store under? A. Let me see. I think I have a card here. Luxor Cleaners.

Q. May I see the card so that I can get the spelling? A. Yes.

Q. Is that establishment still in business? A. Would you mind repeating that?

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Q. Is that store still in business? A. No.

Q. When did it terminate its business? A. Last year about in October or November.

Q. And this E. Barnet, Manager— A. That is my godmother.

Q. And she ran the store and managed the store? A. Yes.

Q. Where does she reside at present? A. She is up in the country somewhere working. I don't know exact where she is working. She is working up in the mountains. I don't know exact where it is.

Q. Does she have a New York address? A. Yes.

Q. What is the New York address? A. 313 West 138th Street: no, it's 139th Street.

Q. What does E stand for? A. Eva.

Q. And you worked off and on and your testimony is that you worked off and on between July, '56, to September, 1960, in the cleaner? A. Yes.

Q. Did you have any other jobs? A. Yes. I wouldn't

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call it a job but I was taking numbers.

Q. All right. That was your other source of income? A. Yes.

Q. Taking numbers? A. Yes.

Q. When were you doing this, during what time? A. Around about '57 until I went back to work.

Q. Until 1960? A. Yes.

Q. Did you have any other sources of income? A. No.

Q. How much did you make taking numbers? A. How much did I make?

Q. Yes. A. I wouldn't know.

Q. How much did you make a day? A. You don't get profit taking numbers by day. You could take $5 worth of business a day and you could take $20 worth of business or a hundred dollars. I was a man that takes about ten or fifteen dollars a day business. That was the best I could do.

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Q. And were you paid by your godmother? A. No. I could always get a few dollars out of the business, you know; go in the drawer and take a couple of dollars out.

Q. Was this with her permission? A. Without her permission or with her permission. I was looking at the store while she was out.

Q. Any other source of income? A. (No response.)

Q. The numbers, you said, you took each day, did you take that six or seven days a week? A. Six days a week.

The Court: Are you still trying this case or are you on another case?

Mr. Carluccio: No, I am on this case.

The Court: I just thought you had something else in mind. The jury would like to get back on this case, if you don't mind.

Mr. Carluccio: No further questions.

Cross Examination by Mr. Archer:

Q. Mr. Ellis, when for the first time did you meet Jesse Colson? A. When was the first time I met him?

Q. Yes. A. Actually in talking to him or the first time

I saw him?

Q. That you became acquainted with him. A. It was in '57.

Q. In 1957? A. Yes.

Q. Were you working at that time? A. Well, I wouldn't say I was working. I was with my uncle. I wouldn't consider that a job but I was helping my godmother in the store.

Q. Was this your godmother or your uncle? A. My godmother.

Q. Are you married? A. Yes.

Q. Do you have a wife? A. Yes.

Q. Children? A. Yes.

Q. When were you married? A. Where?

Q. When. A. When was I married?

Q. Yes.

Mr. Starkey: Objection.

The Court: Is this important to this case?

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Mr. Archer: Yes, your Honor, I want to develop a point with reference to the occupation and to tie up the occupation and the support of this family with this case.

The Court: I will overrule the objection but I think it would be well if we get on with the cross-examination with reference to this case if you want to.

Mr. Archer: I will get into the meat of it, your Honor.

Q. What date were you married? A. June 8, 1949.

Q. And during the time that you were on leave from June or July, 1956, were you living with your wife? A. No. Me and my wife have a legal separation.

Q. Tell me, Mr. Ellis, when for the first time did you meet Icky Thorn? A. I can't memorize the date right at the present but I know the first time that I met him, the first time that I met him.

Q. Let us have the approximate date and time and place. A. I don't know exact the date.

Q. You don't know? A. No.

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Q. Yet you recall all this testimony yesterday.

Mr. Starkey: Objection. Counsel is arguing with the witness.

The Court: I sustain the objection.

Q. Tell me, when were you first arrested in this case? A. I don't know the date.

Q. Have you been arrested in this case? A. Yes.

Q. When? A. I don't remember the date.

The Court: When you are answering questions try to give counsel your best recollection, the year or the month if you can do it. Just give him your best recollection.

A. I would say about six or seven weeks ago.

Q. Six to seven weeks ago? A. Yes, approximately that. That is the best that I can remember.

Q. Who arrested you? A. Who actually arrested me?

Q. Yes. A. I don't know. It was three or four agents.

Q. And after the three or four agents arrested you or

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took you into custody where did you go? A. I went to the House of Detention on West Street.

Q. They took you to the House of Detention at West Street? A. Yes, the federal prison downtown.

Q. I don't want you to argue with me.

The Court: Just a minute. Don't lecture the witness. Just ask questions.

Q. When you were first arrested where were you taken? A. To West Street.

Q. To West Street? A. Yes.

Q. Were you taken subsequently to Mr. Murphy's office? A. No. What do you mean?

Q. Subsequently? Afterwards. A. Yes.

Q. What time? What date? A. The next day, the following day after I was arrested.

Q. Were you, at the time of your arrest, or at the time

you were taken into custody by the Customs, told the rea-

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son for your arrest? A. Yes.

Q. What were you told? A. Violating the Narcotic Act.

Q. And you were brought to Mr. Starkey's or Mr. Murphy's office the following day? A. Mr. Starkey's office.

Q. For what length of time were you interrogated by Mr. Starkey? A. Well, what do you mean by interrogation?

Q. Did you have a conversation with Mr. Starkey? A. Yes.

Q. How long did the conversation last? A. I would say about an hour.

Q. One hour? A. About.

Q. Did you subsequently have further conversations with Mr. Starkey? A. Yes.

Q. Were you served, thereafter, with a complaint? A. I don't understand that.

Q. Were you served with a paper in the Commissioner's office, or taken to the Commissioner's office?

The Court: Were you served with any papers at all in this case, did anybody serve any papers on you.

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A. I think so. I think so.

Q. Well, you were only arrested six or seven weeks ago. Do you know for a fact whether you were served with any papers by any person in this room? A. Well, I was in front of a judge and he read what I was charged with.

Q. And did you have counsel at the time? Did you have a lawyer? A. No.

Q. Were you apprised of the fact that you had an opportunity to retain an attorney? A. I didn't understand.

Leon Ellis—for Government—Cross

Q. Were you told that you could have had an attorney to represent you? A. Yes.

Q. Did you try to get an attorney to represent you? A. No.

Q. Were you then placed on bail, was a bail bond set for you in this proceeding before the judge? A. No.

Q. What happened? Let us know what happened there when you were taken before the judge. A. I was let out on my own power or something like that.

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Q. You were let out on your own custody?

The Court: Recognizance, is that the word?

A. Recognizance.

The Court: In other words, you mean that you didn't have to bring in a bondsman.

The Witness: That's right.

The Court: Did you sign something yourself to get out? Did you sign a bond yourself?

The Witness: No, sir.

The Court: All right.

Mr. Starkey: Your Honor, I think it should be called to counsel's attention that this was a commissioner and not a District Court judge.

Mr. Archer: Well, he said a judge.

The Court: I think the jury understands that this is some sort of committing magistrate.

Q. And at the time you were before the commissioner was the complaint read to you with the charges, if any, against you? A. Yes.

Q. Were you given a copy of this complaint? A. No.

Mr. Archer: At this time, your Honor, I would request that the government produce a copy of the complaint served on this witness.

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The Court: Well, sir, the subpoena power of the court is available to you and if you want a copy of the subpoena just subpoena it and I will see that you get it.

Q. And after you appeared before the commissioner you were set out without bail, is that so? A. Yes, sir.

Q. Was there any recommendation made by the U. S. Attorney in your presence at the time with reference to bail? A. I didn't get that. I didn't understand the question.

Q. You don't seem to understand anything.

Mr. Starkey: Objection.

The Court: Just a minute. Don't argue with the witness. The witness may not be as well educated as you are. Speak in words of single syllables as much as possible.

Q. At the time that you were before the commissioner was any recommendation made with reference to bail by the U. S. Attorney? A. I don't remember.

Q. You don't remember that? A. No.

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Q. How many times after you were released on bail did you visit either with Mr. Starkey or Mr. Murphy? A. I would say eight or nine times.

Q. And at each time did you have conversations with either Mr. Murphy or Mr. Starkey? A. Yes.

Q. When you had the conversations with Mr. Starkey were they in question and answer form? A. Yes.

Q. And he asked you certain questions and you gave him certain answers? A. Yes.

Q. Do you recall a statement made by you to Mr. Starkey in question and answer form dated April 25, 1961? A. Do I remember any?

Q. No, do you recall having made a statement to Mr. Starkey in question and answer form dated April 25, 1961.

Mr. Archer: I think it is Government's Exhibit 4.

The Court: Why don't you just show him the statement. It is Court Exhibit No. 11 for identification.

Mr. Archer: All right, your Honor.

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A. Yes.

Q. Now this statement was reduced to writing, is that so? A. It was reduced to what?

Q. Well, this is the statement that you made to Mr. Starkey? A. Yes.

Q. And these are all the questions asked of you by Mr. Starkey and all the answers given by you to Mr. Starkey? A. Yes.

Q. And this statement was read to you afterwards, was it, at any time? A. I think so. I don't remember.

Q. You think so? A. Yes.

Q. Then you were arrested on April 24, 1961, am I correct? A. I don't know exact what day I was arrested.

Q. Well, this was taken one day after you were arrested, am I not right? A. Well, I don't know exact. I really don't know.

Q. When the statement was taken by Mr. Starkey did you at that time recall the entire incident and the state-

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ments that you made yesterday? A. Did I actually recall—

Q. Yes. At that time you were asked about all the related circumstances involving you in this case. A. Well, I gave my answers to the best that I could remember at the actual time that I was doing these things. In other words, I remember what I did, but the dates and the months I can remember them pretty close but I can't tell the dates and months but I actually know that I did these things.

Q. And you were asked substantially all the questions you were asked yesterday? A. I was asked what?

Q. Substantial or you were asked—the questions you were asked yesterday were they the same questions asked at the time that you made this statement? A. I don't remember.

Q. You don't recall that? A. I don't remember.

Q. I show you this statement and I ask you whether or not there is any question and answer in this statement with reference to Icky Thorn at the 94th Street address? A.

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(No response.)

Q. Mr. Ellis, you can read and write, can you not? A. Pretty fair.

Q. How far in school did you go? A. I finished grammar school.

Q. Oh, you finished grammar school? A. Yes.

Q. Then you read these statements just now, did you not? A. No, I didn't read them.

Q. You didn't read them.

Just read them and refresh your recollection as to whether or not there is any statement in here. A. Do you want me to read everything?

Q. Yes.

(A pause.)

Q. Then, Mr. Ellis, you have read Government's Exhibit 11, or Court Exhibit 11 for identification, have you not? A. Yes.

Q. At the time you made these statements were the incidents in your connection in this case clear to you? A. You mean what I was charged with?

Q. Yes, what you were charged with and what you were doing.

Mr. Starkey: I will object there, your Honor. I don't think that question is clear. It is not clear to me. I know that.

The Court: Rephrase your question.

In other words, what he wants to know is at the time you were arrested and at the time that you gave the statement that you just read, did you remember the incidents that took place which you described yesterday? I think that is the question.

Mr. Archer: That's correct.

A. I couldn't remember everything as it happened, but, you know, I remember as close as possible at that time.

Q. Yet you did not tell Mr. Starkey, in your statement, anything with reference to Icky Thorn at the 94th Street address.

Mr. Starkey: Objection.

The Court: What is the basis of the objection?

Mr. Starkey: First of all, your Honor, the argumentative form of the question, and the witness, at least counsel has not asked the witness whether or not he was asked about it. He has brought it in that

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it was in question and answer form.

The Court: Well, in any event, were you asked anything about Icky Thorn in that statement?

The Witness: No.

The Court: Did you answer anything about Icky Thorn in that statement?

The Witness: No.

The Court: All right, take the witness.

Q. Now, Mr. Ellis, you stated that you saw Mr. Starkey about eight or nine times prior to your coming here to testify. Did you discuss this case eight or nine times with Mr. Starkey? A. He was asking me a few questions about different things and I was telling him the best I could.

Q. And each time you came here were new questions asked of you and new statements given by you to Mr. Starkey? A. Well, yes.

Q. And then you gave to Mr. Starkey other statements other than these that you read at different times?

Mr. Starkey: Your Honor, I will object because I think on the one hand he asked about questions and answers that were taken down, a stenographic statement and now he is switching over, insofar as

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taking an oral statement is concerned. I don't think the question is clear enough.

The Court: Rephrase the question.

What he wants to know is this, you talked to Mr. Starkey several times about this, didn't you?

The Witness: Yes.

The Court: Now one time at least you had a stenographer present, and she produced this typewritten statement?

The Witness: Yes, sir.

The Court: Did you see the typewritten statement after she typed it?

The Witness: Yes.

The Court: You did see it?

The Witness: Yes.

The Court: Now, then, on the other occasions when you saw Mr. Starkey was there a stenographer present?

The Witness: No.

The Court: Now on those other occasions he wants to know what Mr. Starkey was doing while he was questioning you.

The Witness: Well, he was asking me about different people, and I revealed what I did with that person.

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The Court: Did you ever see any other kind of statement that resulted from Mr. Starkey asking you questions other than this statement that has just been shown to you?

The Witness: (No response.)

The Court: In other words, was any other statement prepared from an interview you had with Mr. Starkey other than the statement that you just saw?

The Witness: No.

The Court: All right, take the witness.

Q. When for the first time did you discuss Icky Thorn and your visit to a 94th Street address with Mr. Starkey? A. I don't know what date it was.

Q. Did you for a fact go to 94th Street at any time with Jesse Colson as testified yesterday? A. Did I?

Q. Yes. A. Yes.

Q. When? A. The best I can remember is—

Mr. Somers: Your Honor, I respectfully wish to state that counsel did not get the complete transcript taken down by Mr. Starkey. I know it was through

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inadvertence but we didn't get it and it is very important to this issue and to the cross-examiners, and can we have two minutes while Mr. Starkey furnishes us with these additional sheets?

Mr. Starkey: Your Honor, the Court will recall that I stated that there were two stenographic statements yesterday and that I stated for the record that on the original, which is in reality only five different pages, that two copied pages were included to make the total mass seven pages and I thought defense counsel understood that, and I also said at that time that they could pull out, or the two copied pages could be pulled out of the exhibit for identification to reduce it to the five different pages.

Mr. Somers: Your Honor, this is very pertinent, as your Honor will see. We don't have it. We merely want it. That is all. We haven't got it.

The Court: Check and see if you have given it all to him.

Mr. Starkey: Your Honor, now on the record, I would like to remove two carbon copies of the first page of Court's Exhibit 11 for identification which were included in the exhibit at that time, and they may have the copy which they have requested.

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Mr. Somers: Does this now include the entire statement of this witness that was reduced to writing?

Mr. Starkey: Of course it does, your Honor. The only change in Exhibit 11 for identification, Court's Exhibit 11, has been that it's now been reduced from seven to five pages by the removal of two carbon copies of page number 1.

Mr. Somers: Except that you now also have given me the statement dated June 6th which we did not have until just now.

Mr. Starkey: Your Honor, I object to this before the jury. The total statement was marked for identification yesterday and given to counsel for examination at the close of the session.

Mr. Somers: Judge, can we approach the bench.

(Discussion at the bench off the record.)

The Court: Let's proceed. All right, take the witness, counsel.

Q. Mr. Ellis, you were questioned again on June 6, 1961, by Mr. Starkey, and Court Exhibit No. 11 is here, and you read the statement here on June 6th, did you not? A. Yes.

Q. And is there any reference to Icky Thorn in this

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statement that you read just now? A. I don't remember.

Q. Did you read it? A. I read the first page. I didn't read all the pages.

Q. The first is what I referred to. That is the only page on the questions and answers of June 6th. A. I don't see anything about Icky down there.

Q. Thank you.

And when for the first time was the name Icky Thorn brought to your attention? A. When I was down at 94th Street.

Q. When you were down where? A. 94th Street.

Q. What happened at 94th Street? Tell us. A. You want me to tell you exact what happened?

Q. Yes, tell us what happened at 94th Street. A. We went up to this apartment.

Q. Who took you up to the apartment? A. Colson, Jesse Colson.

Q. What time of the year? Give us the specific time and date. A. I can't give you the specific time.

Q. Was it the early part of the year, the summertime

or the latter part of the year? A. It was, the best I can remember, the latter part of the year.

Q. About what month, more or less, and what year? A. This was '57, November or December. That is as close as I can get to it.

Q. November or December, 1957? A. Yes, that is as close as I can get to it.

Q. November or December, 1957? A. Yes.

Q. What was the address at 94th Street? A. I don't know.

Q. Could you describe the building that you entered? A. No.

Q. Did you know for a fact that Icky Thorn was residing there? A. No.

Q. What were you told when you were taken to this apartment? A. I wasn't told anything.

Q. As to who resided there. A. Nothing.

Q. And you stated yesterday that you were taken to an

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apartment at a 94th Street address. A. Yes.

Q. Did you go into the building? A. Yes, I had to go in the building to get upstairs.

Q. And you entered an apartment? A. Yes.

Q. Was this an apartment house? A. This was an apartment building.

Q. Yes, an apartment building. A. Yes.

Q. Do you recall what apartment you entered? A. No.

Q. Did you enter the apartment? A. Did I enter the apartment?

Q. Yes. A. Yes.

Q. Was it a large apartment? A. I think it was a small apartment. I don't know direct. The furthest I got was in a room and a small kitchenette.

Q. How many rooms were there in the apartment? A. I didn't go in the rooms.

Q. Oh, you didn't go into the rooms? A. The only one

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room I went into was a small room and a little kitchenette.

Q. A small room and a little kitchenette? A. Yes.

Q. Who was there? A. I don't remember.

Q. You don't remember? A. No. There was a couple of girls and—a couple of girls.

Q. There were a couple of girls there? A. Yes.

Q. Who else? A. And me, Icky, and Colson.

Q. Did you meet Icky before this time? A. No.

Q. How did you know Icky was there? A. Because I know Icky was there. I was looking at him.

Q. Were you introduced to him? A. Yes.

Q. When were you introduced to him? A. The same night when I went up there.

Q. Was that the apartment that Icky lived in? A. I don't know whether he lived there or not.

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Q. But you said you saw Icky there. A. Yes.

Q. Did you or Jesse give any package or packages to Icky Thorn at that time? A. No.

Q. Did you have any package or packages with you at the time you entered the apartment? A. Jesse had a little black bag.

Q. Then did you not see the contents of the black bag that Jesse had? A. No.

Q. Did you see Icky with anything when you got there? Where was Icky when you got there? A. Icky opened the door.

Q. He opened the door? A. Yes.

Q. Then what happened? A. Then what happened? Jesse told Icky, he said, "This is Schoolboy." He said "This is Icky," and Jesse told Icky, he said, "Here is the man for the coke." And Icky said, "All the coke?" Jesse said "Yes."

Q. Did Jesse give—

Mr. Starkey: I don't think the witness is finished, your Honor. The question was what happened.

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The Court: Finish the answer. What else happened?

A. And Icky said, "All the coke?"

Jesse said, "Yes." He said, "I got a man that is coming over in a few minutes and I could cut the coke and you could almost double your money."

Jesse said "Yes, I didn't think about that but I got cash money now." You know. Icky said, "Well, I got a man who is coming who is a good customer. He is my man." And Jesse said "Yes. I will tell you what I will do." He said, "I will let you send half to your man, Schoolboy, and let Icky keep half for his man."

Icky went into a little dinette where there was a table and he was measuring the coke and putting it from one jar into another.

Q. At the time you spoke with Mr. Starkey did you relate this conversation to him?

Mr. Starkey: I will ask that counsel designate which conversation he is speaking of.

The Court: At any time.

Q. At any time, the conversation with reference to what you just said. A. Well, he asked me did I know Icky,

and I told him yes. And he asked me from what? And I told him how I met Icky and what took place at that time.

Q. And you recall now, and yesterday, the exact words that were said when you were there three or four years ago? A. No, not the exact words. Have you ever been in a conversation, in a slang conversation? It is just the words used.

Q. You testified yesterday that Icky Thorn was living at 115th Street, is that not so? A. Is it what?

Q. Is it correct that Icky Thorn was living at 115th Street, is that not so? A. Is it what?

Q. Is it correct that Icky Thorn was living at 115th Street?

Mr. Starkey: Again, your Honor, I am going to ask if counsel is going to characterize the witness' testimony that he give it in full, as to time and a complete question.

Q. You were asked yesterday:

"Q. Now, do you know where defendant Thorn was living at this time? A. Who?

"Q. Icky Thorn. A. Yes.

"Q. Where? A. He was living in a hotel. I don't know exact the street of the hotel but it is in the area of 115th and 116th Street near Amsterdam Avenue."

Were you asked those questions yesterday and were your answers substantially true? A. At which time are you talking about?

The Court: No. The question is this: You testified on cross here that you went to a room where Icky Thorn opened the door and you went in and this room was in an apartment building on 96th Street. Haven't you testified to that?

The Witness: 94th Street.

The Court: 94th Street. I am sorry. Now counsel read to you part of your testimony from yesterday in which you said that Icky Thorn was living at a hotel on 115th Street or around 115th Street. Now

just explain to the jury about that. In other words, explain to the jury about the two places, if you can.

The Witness: 94th Street was an apartment house, and 115th Street was in a hotel.

The Court: All right, take the witness.

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Q. Was there any lapse of time between the 94th Street incident and the 115th Street incident? A. Yes.

Q. What time elapsed? A. Well, we used to go up there in September and October.

Q. September and October? A. Yes.

Q. How many times did you have occasion to visit the 94th Street address? A. Only once.

Q. How many times did you have occasion to visit the 115th Street address? A. Oh, six or seven times more or less.

Q. Would you say then that Icky Thorn lived at 115th Street and not at 94th Street?

Mr. Starkey: Objection.

The Court: Suppose you tell us, do you know where Icky Thorn lived? Do you know whether or not he lived at 94th Street at all during this period of time?

The Witness: No, I don't.

The Court: All right.

Q. Tell me, did you know a Sylvia Ferris? A. Yes, sir.

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Q. Did you see her at 94th Street? A. No.

Q. Did you see her any place at all? A. Yes, I seen her a lot of places.

Q. Did you see her at the 115th Street address? A. Yes.

Leon Ellis—for Government—Cross

Q. Do you know whether she was living at 115th Street with Icky Thorn as husband and wife? A. I don't know whether they was living as husband and wife.

Q. Do you know whether she was living at 115th Street? A. She was up there a lot of times when I was up there.

Q. She was up there a lot of times when you were up there? A. Yes.

Q. Tell me, yesterday you demonstrated a freeze to the Court. Are you an expert? A. I am not a chemist.

Q. How many times have you done this freeze? A. Quite a few times.

Q. Quite a few times? A. Yes.

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Q. Then you are qualified by the number of times to test narcotics? A. I am not qualified for anything.

Q. But you have done the freeze many times, have you not? A. A few times.

Q. About ten times, would you say? A. I don't know how many times.

Q. Give us your best recollection. A, Seven or ten times.

Q. Can a freeze be had with novocain? A. No.

Q. At any of these instances that you visited Icky Thorn with Jesse Colson did you see Colson give any package or packages to Icky Thorn? A. No.

Mr. Archer: That is all.

Cross Examination by Mr. Pogoda:

Q. Now I heard you say your name is Schoolboy. A. Yes, sir.

Q. How did you come by that name? A. Well, when I came out of the Navy I was selling books, History of

World War I and History of World War II, and there was a poolroom I was going by there, I was playing pool,

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and I used to have my books on the bench and there was a fellow named Cuddy, and he started calling me Schoolboy.

Q. How long did you sell these books? A. I don't think I made a sale.

Q. Had you worked before you went into the Navy? A. No.

Q. And did you then find a job with the Apex Company? A. Yes.

Q. As an orthopedic mechanic? A. No, as a floor sweeper when I first started, doing odds and ends, things around the shop.

Q. And then you advanced to become an orthopedic mechanic? A. No, I learned it just working with my boss.

Q. When you left in 1956 how much were you earning a week? A. I think I was—actually on the payroll was about $84 but I was getting—

Q. Money under the table? A. Yes. The boss used to keep—

Q. Petty cash? A. No. He used to give me about $10

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extra because I used to go down on Saturdays and work, and he gave me a flat $10 for working on Saturday.

Q. At the time you left in 1956 to work in your godmother's cleaning store you were earning $84 a week and you were making $10 on Saturday? A. Yes.

Q. How much were you going home with each week? A. I don't know exact.

Q. $80 a week? A. I don't know. I can't tell you exact.

Q. $75 a week? A. You could call down to the shop and I think—

The Court: Well, was it about $75?

The Witness: I don't know how much they was deducting from me. It run about $74, right in there some place.

Q. And were you living with your family at that time? A. No.

Q. Are you supporting your family?

Mr. Starkey: Objection.

Mr. Pogoda: On the credibility, Judge.

Mr. Starkey: I see no relevancy.

The Court: Just answer the question, are you

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or not.

The Witness: Yes, to the best of my ability.

Q. Now when you went to work in your godmother's store did you start collecting policy?

Mr. Starkey: Objection.

The Court: Well, are we going to go over this again?

Mr. Pogoda: I want to show that he left a legitimate employment for an illegitimate employment.

The Court: Overruled. You worked policy at the same time you worked with your godmother's store?

The Witness: Yes.

Q. So that from 1956 to 1960 you were in the policy racket?

Mr. Starkey: Objection.

The Court: I think he said he was. You did sell during that period, didn't you, policy?

The Witness: Yes. I wasn't a day-to-day man. When I picked up a few dollars, all right.

Q. And you went to work, returned to Apex in September of 1960, is that right? A. Yes.

Q. Yet in November of 1960 you were arrested for policy, were you not?

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Mr. Starkey: Your Honor, I submit that—

A. No, sir.

The Court: He said no. You were not arrested in 1960 for policy?

The Witness: No, sir.

Q. Were you asked this question yesterday:

"Q. Would you tell the Court and jury when and what crimes you have been convicted of? A. I was convicted for disorderly conduct in 1951, and policy November 27, 1960."

Did you answer the question that way?

Mr. Starkey: Your Honor, I object at this time because counsel is reading a question and answer which occurred yesterday but it does not contradict anything that the witness has said. He testified about an arrest. The question and answer relates to a conviction.

The Court: I sustain the objection. You better clarify your question.

Q. Well, now, did you engage in policy after you returned to work? A. No.

Q. You returned to work on September 6, 1960? A. Yes.

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Q. Is that true or is that not true? A. Yes.

Q. Did you not tell us yesterday that you were convicted for policy on November 27, 1960? A. But the conviction in the time that I was arrested is two different things.

Q. You mean you pleaded not guilty in that case? A. I pleaded not guilty.

Q. I am asking you, did you plead not guilty?

Mr. Starkey: Your Honor, I will object to any further exploration in this area.

The Court: When were you arrested for this policy, do you remember, in '60?

The Witness: I think it was, the best I can remember it was in June.

The Court: June of 1960?

The Witness: Yes. June or July.

The Court: And then the case came up in November of 1960?

The Witness: That is when it was disposed of in the same year.

The Court: In November, 1960?

The Witness: It was December 27th of last year.

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Q. December 27th? A. Yes, December 27th of last year.

Q. You know November 27th was a Sunday, don't you? Is that why you are changing your answer?

Mr. Starkey: Objection, your Honor, counsel is testifying and he is not asking single questions also.

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Q. All right, let me ask you this—

The Court: He has withdrawn the question, I think.

Mr. Starkey: All right.

Q. Between June and the time you returned to work did you continue to take numbers? A. No.

Q. When did you apply back for your job? A. Ask that question again, please.

Q. When did you ask your boss to take you back to work at Apex? A. That is like the other question you asked me.

Q. Answer this one, if you will. A. Repeat it.

The Court: When did you try to get your job back or try to get a job at Apex?

The Witness: I went down there on that date—

The Court: The same day?

The Witness: Yes, and started to work.

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The Court: That was what, September?

The Witness: September 6th, in that period of time.

Q. Around Labor Day, is that it? A. (No response.)

Q. Was it around Labor Day that you went back to work? A. It was the first, second or third week in September.

Q. Now, between June and September when you went back to work weren't you still engaged in policy? A. I wasn't working in June. I only started back to work in September.

Leon Ellis—for Government—Cross

Q. Between the time you were arrested for policy and the time you went back to work for Apex were you still taking policy numbers? A. When I went back to work for Apex?

Q. That is a very simple question. I submit that—

Mr. Starkey: I also submit that the question is objectionable.

The Court: Well, in June, July and August of 1960 were you taking policy numbers.

The Witness: Yes.

The Court: You were?

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The Witness: Yes.

Q. Now you went back to work at Apex because the New York City Police Department made an intensive drive on policy drops in Harlem, isn't that so?

Mr. Starkey: I object, your Honor. I think this is extremely collateral.

The Court: I think the jury would like to hear a little bit about this case.

Mr. Pogoda: It is a matter of credibility, Judge.

The Court: I know but you have been through it many, many times. He has admitted that he has been in policy many, many times. I think we ought to get on to this case, that is if you want to ask him about this case.

Mr. Pogoda: I expect to go very thoroughly into this case, your Honor.

The Court: All right.

Q. When did you start trafficking in narcotics? A. In '57.

Q. You knew nothing about narcotics before 1957? A. As far as cocaine—

Q. What narcotics did you use or traffic in before? A.

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I didn't use narcotics.

Q. What narcotics were you familiar with before you became familiar with cocaine in 1957? A. I wasn't that much familiar with it.

Q. Were you familiar at all with narcotics? A. Well, no. I heard about it.

Q. Did you ever know people who used narcotics?

Mr. Starkey: Objection.

A. I did.

The Court: He said he did.

Q. Did you know people who sold narcotics?

Mr. Starkey: Objection.

The Court: That is overruled. This is cross-examination.

Q. Did you know people who pushed it? A. Well, no.

Q. And yet when you met Colson in 1957 you heard he was in the narcotics business, isn't that so? A. Yes.

Q. Where did you learn that? A. In the street.

Q. From whom? A. From people in the street.

Q. Was it being advertised in the street? A. Well, yes.

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If a person is in the business a guy will tell you, there is a guy, he is in the business. You know, you hear that all around.

Q. Now, from how many different people did you hear that? A. It was around.

Q. When you say in the street can you tell us where? A. That you could hear a conversation like that.

Q. Yes. A. Well, all over Harlem.

Q. You mean up and down the streets and avenues of Harlem everybody knew that Jesse Colson was in the narcotic business? A. Yes. It was just about that.

Q. You knew Jesse Colson was a seaman, did you not? You knew Jesse was a seaman, didn't you? A. Yes.

Q. And you knew he made trips for weeks at a time, isn't that so? A. Did I know before or after?

Q. In 1957 you knew he was a seaman, did you not? A. Yes.

Q. And you knew he went on a ship, made a foreign

trip, came back, maybe stayed in port a day or two and went back again, isn't that so? A. I wasn't watching him that close.

Q. But you said you heard everywhere you went that Jesse Colson was a narcotic peddler? A. In other words, when he would come around you would hear the word.

Q. How often would he come around? A. I don't remember how often he could come around.

Q. Once a month? A. I don't know. I don't remember.

Q. Once in two months? A. (No response.)

Q. Every day? A. I don't remember.

Q. You don't know, do you? A. No.

Q. Now, do you know anyone that knows Jesse Colson other than the people you have mentioned on this witness stand? A. (No response.)

Q. People that you know that know Jesse Colson. A. (No response.)

Q. Other than the people whom you have mentioned in

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this court. A. Do I know people that know him?

Q. Yes, other than those you have told us about now. A. Yes, I know other people that know him.

Q. All right, let's have their names. A. His wife, and his brother-in-law, and his brothers, all them know him.

Q. And they all told you he is a pusher of narcotics? A. No. We wasn't in the street. I was always in their house.

Q. Who in the street—that is the point I want- who in the street pointed out Jesse Colson to you as a narcotic seller? A. I don't remember.

Q. You can't give us any names, can you? A. No.

Q. Did you know any narcotic pushers? A. No.

Q. Yet you wanted to go into this business to sell narcotics, am I right?

Mr. Starkey: I object to the form of the question, your Honor.

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The Court: I think you are arguing with the witness now. Rephrase your question, please.

Q. When you met Jesse Colson did you ask him to let you work for him? A. Yes.

Q. What sort of work did you want to do for him? A. Well, anything that he wanted me to do.

Q. Could you do any work for him as a seaman? A. No.

Q. The only work you could do for him was in connection with narcotics, isn't that so? A. Listen, when we was out in the street he wasn't sailing.

Q. That's right. The only work you could do for him was narcotics, isn't that so? A. Yes.

Q. And you wanted to get into this business to sell narcotics to pushers, isn't that so? A. What do you mean by a pusher?

Q. You don't know what I mean by a pusher in the narcotics business? A. I think I know but I want to know—

Q. What do you know as a pusher?

Mr. Starkey: Your Honor, I will object to this

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line of questioning. I don't think this is of any great importance.

The Court: Overruled. Tell us what a pusher is.

A: It is a guy in the street selling narcotics.

Q. And you wanted to make a deal for Jesse with these men here, am I right? A. Yes.

Q. And you found such a man in Tillie, isn't that so? A. I found that wanted to buy, yes.

Q. Tillie was the first customer you got, isn't that so? A. Yes.

Q. Did you get other customers for Jesse Colson? A. Yes.

Q. Did you tell Mr. Starkey about the other customers? A. Well, he did not ask me.

Q. He was only concerned about the men in this case, isn't that so? A. I don't know what he was concerned about.

Q. That is all he questioned you about, about the men in this case, isn't that so? A. He asked me did I know people and I told him yes.

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Q. He asked you if you knew Maxie? A. I don't remember.

Q. He did not ask you whether you knew Maxie?

Mr. Starkey: I will object, your Honor. The witness testified he couldn't remember.

The Court: He said he doesn't remember. Ask another question.

Q. Did he ask you if you knew Hawk? A. I don't remember it.

Q. Did he ask you if you knew Purry? A. Yes.

Q. Did he ask you if you knew Duke? A. No.

Q. Never asked you if you knew Duke? A. Duke who?

Q. Duke? Didn't he refer to someone by the name of Duke? Just as Duke. A. No.

Q. He did not? A. No.

Q. Did he ask you if you knew Massiah? A. Yes.

Q. Did he call him Massiah or did he call him Winston?

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A. Winston Massiah.

Q. Mr. Massiah. A. Winston Massiah.

Q. Did he ask you if you knew Colson? A. Yes.

Q. Didn't he also ask you if you knew a man named Leon, also known as Booby? A. Yes.

Q. On 146th Street? A. No, 136th Street.

Q. Did he ask you whether you knew a man named Leon, also known as Booby at 146th Street between Eighth Avenue and the Skin Joint?

Mr. Starkey: Your Honor, if counsel is going to read from the witness' statement, I would ask that

the questions and answers be read rather than paraphrase it.

Mr. Pogoda: I will offer in evidence at this time Court's Exhibit 10 for identification.

Mr. Starkey: No objection.

The Court: Mark it.

(Court's Exhibit 10 for identification received in evidence as Defendant Anfield's Exhibit D.)

Q. Now I show you Defendant's Exhibit D in evidence and ask you whether or not you ever saw Mr. Starkey in

possession of these small sheets of paper as he spoke with you? A. I don't remember seeing them.

Q. You say that Mr. Starkey did not have those papers?

Mr. Starkey: Your Honor, I object. The witness testified that he didn't remember seeing them.

Mr. Pogoda: I haven't finished my question. I don't think it is proper for him to interfere.

The Court: He said he doesn't remember seeing them.

Mr. Pogoda: I am trying to refresh his recollection.

The Court: All right, ask your question.

Q. Now as Mr. Starkey spoke to you did he ever have these yellow sheets in front of him? A. Yes.

Q. Did you see writing on these yellow sheets? A. Yes.

Q. Did you ever see a paper this size in Mr. Starkey's office? A. I don't remember.

Q. As Mr. Starkey called off Massiah's name you didn't see that he made a dash alongside of it? A. No.

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Q. You didn't see that? A. No.

Q. As he called Leon's name did he say first Silver, Leon?

Mr. Starkey: What?

Mr. Pogoda: This is your handwriting.

Mr. Starkey: Your Honor—

Mr. Pogoda: This is an exhibit in evidence.

The Court: I guess you are about at the end of the list so I will overrule the objection.

Q. Now Mr. Starkey, did he ask you anything about January or February with Leon on 125th Street? A. No. I don't remember that. No.

Q. Nothing like that at all? A. No.

Q. Now, Mr. Ellis, can you tell us again when for the first time you were questioned by Mr. Starkey? A. I don't remember the date.

Q. The day after your arrest. A. Yes.

Q. And was a stenographer present on that occasion? A. Yes.

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Q. And were you told by Mr. Starkey that you didn't have to answer any questions, you have a constitutional right not to answer any questions? A. Yes.

Q. Did Mr. Starkey say what might happen to you if you didn't answer any questions? A. No.

Q. He didn't say you were charged with a serious thing and if you cooperated with the government you would receive consideration? A. He told me if I tell the truth that my testimony would be considered by the Court.

Q. Did Mr. Starkey also tell you there was a case pending in this court against Jesse Colson, Winston Massiah,

Mitchell Anfield, and a number of other men, Icky Thorn, Sylvia Ferris? A. No, he didn't tell me that.

Q. Well, now, when you were speaking to Mr. Starkey, was it about the case on which you were arrested or was it to be on a case in which Jesse Colson and the other men were arrested? A. It was about my case.

Q. About your case? A. He asked me—

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Q. Just a moment. It was about your case? A. (No response.)

Q. Where were you arrested? A. 139th Street in front of Carter's Corner Bar and Grill.

Q. Did you have any narcotics on you when you were arrested? A. No.

Q. Now, when the officers came over to you did you ask them why they were arresting you? A. No, they didn't give me a chance to ask them why.

The Court: Well, this might be a good time to take a recess. We will recess now until 2:15 under the same instructions as before.

(Recess to 2:15 p.m.)

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AFTERNOON SESSION

2:15 p.m.

(Jury present.)

LEON ELLIS resumed.

Mr. Starkey: Before the Court proceeds, Exhibit 22 for identification has not been marked into

evidence. I would ask that it be received at this time.

(Government's Exhibit 22 for identification received in evidence.)

Mr. Carluccio: Your Honor, may I approach the bench along with Mr. Starkey for one moment?

The Court: All right, step up Mr. Starkey, please.

(Discussion at the bench off the record.)

The Court: All right, proceed, Mr. Pogoda, please.

Cross Examination by Mr. Pogoda (Continued):

Q. Now, Mr. Ellis, during this luncheon recess did you have occasion to speak to anyone connected with the government? A. No.

Q. You had no conversation with Mr. Murphy, the government agent? A. No.

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Q. Or any of the other government agents assigned in the witness room? A. Not a conversation, no.

Q. Did you leave the building during this luncheon recess? A. Yes.

Q. In the company of anyone? A. Yes.

Q. In whose company? A. A Treasury agent.

Q. How many? A. One.

Q. And you had no conversation with him at all? A. Not about the trial, no.

Q. Not about what? A. Not about the trial, no.

Q. Well, now, do you recall at what time you were arrested? A. I would say about 9:30, 10 o'clock.

Q. In the evening? A. Yes.

Q. In front of Carter's Bar? A. Yes.

Q. Were you arrested by arrangement, Mr. Ellis? A. I don't think so.

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Q. Did you know you were going to be arrested? A. Well, I wished I did. I don't think I would have been there.

Q. Was anyone in the company of the agents? In other words, was there anyone you knew accompanying the agents at the time of your arrest? A. No.

Q. Tell us what happened as they approached you. A. Well, I was standing there talking to a friend and an agent came over to me and tapped me on the shoulder and said "Treasury agent" and grabbed me by the arm, and a couple of cars pulled up and they put me in the car.

Q. Did they ask you your name? A. No. They told me my name.

Q. Did you admit you were Leon Ellis? A. Yes.

Q. And then you were taken down to West Street? A. Yes.

Q. Now the following morning I take it you were taken out of West Street and brought to this building, isn't that so? A. Yes.

Q. Were you taken into Mr. Starkey's office or were you

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taken before a commissioner? A. I was in Mr. Starkey's office first.

Q. And is that when this question and answer were taken down by a woman? A. Yes.

Q. And it was after then that you were arraigned before a commissioner in this building? A. Yes.

Q. And you were paroled in your own custody? A. (No response.).

Q. You were released on your own recognizance? A. Yes.

Q. Now at that time were there charges read to you? A. Yes.

Q. And those charges said that you were trafficking in narcotics? A. I don't know exact what—

Q. Did it use the word "conspiracy" in the charges that were read to you? A. I don't remember exact.

Q. Now were the charges read, if you recall, Mr. Ellis, a sworn affidavit by Agent Finbarr Murphy who said that "On February 12, 1958, you, unlawfully, wilfully and knowingly did receive, conceal, sell, facilitate, the trans-

portation, concealment and sale of a narcotic drug, to wit, approximately six ounces of cocaine." Was that read to you? A. Yes.

Q. Now, were you in the narcotics business on February 12, 1958?

Mr. Starkey: Your Honor, I will object. I don't think the question is clear.

A. I didn't understand that question.

Q. Did you have in your possession in the Southern District of New York on February 12, 1958, six ounces of cocaine? A. I wasn't in New York February 12th.

Q. You told that to Agent Murphy when you were arrested, did you not? A. I don't remember.

Q. Did you tell that to Mr. Starkey before you appeared in court on this day when this charge was read to you? A. I don't remember.

Q. Did you not tell us before that when you discussed this matter with Mr. Starkey that you told him that you

left New York January 28, 1958, and returned here on February 28, 1958? A. Yes.

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Q. That is true, isn't it? A. I left January 28th—

Q. And returned on February 23rd? A. Yes.

Q. Isn't that true? A. Yes.

Q. You told Mr. Starkey that you had been to Chicago and to Mississippi to attend your mother's funeral? A. Yes.

Q. And you told him that before you were taken before the commissioner, isn't that so? A. I don't remember.

Q. You didn't conceal that fact from Mr. Starkey or Agent Murphy, did you?

Mr. Starkey: Your Honor, I object.

Mr. Pogoda: If the Court please, each time the defense is about to make a telling point Mr. Starkey rises and attempts to—

Mr. Starkey: I object to speeches on the part of defense counsel.

The Court: Overruled. Did you conceal this from the government or Mr. Starkey or any representative

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of the government, the fact that you were in Chicago and Mississippi during January and February of 1958?

The Witness: I don't remember, your Honor. Maybe I did and maybe I didn't.

Mr. Starkey: May I make clear the basis of my objection that it assumes a fact not in evidence: namely that he was asked where he was prior to the arraignment.

Leon Ellis—for Government—Cross

Mr. Pogoda: There is in evidence Defendant's Exhibit D.

The Court: Suppose you continue.

Mr. Pogoda: May I have Defendant's Exhibit D. I think you have it, Mr. Starkey. It is among your notes.

Mr. Starkey: Defendant's Exhibit D?

Mr. Pogoda: Defendant's Exhibit D. Your notes of your conversation with him.

(A pause.)

Mr. Pogoda: I am now reading from Defendant's Exhibit D, Mr. Starkey's own notes.

Mr. Starkey: Your Honor, I object.

Mr. Pogoda: May I then be permitted to read it to the jury?

Mr. Starkey: I wish to object on this ground,

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your Honor, that counsel is implying that these notes were taken at the time that he was first brought into the office. I wish to object on that ground.

Mr. Pogoda: My implication—I wouldn't want to express it before the jury.

The Court: Just read it. I think the jury knows that it was the typewritten statement taken from the defendant the first time that he was in the office of Mr. Starkey and that these notes on the brown paper came later. Read what you want to now, Mr. Pogoda.

Mr. Pogoda: "January 27, 1958, witness's mother died."

I assume W. S. an abbreviation for the witness.

"After witness returned from Chicago on February 22nd he saw Jesse at witness' house, 149 West 140th Street."

Q. You told that to Mr. Starkey in one of your interviews, did you not? A. After I returned?

Q. When you were in Mr. Starkey's office on one occasion didn't you tell him that between January 27th or January 28th and February 22nd you were in Chicago and Mississippi and not in New York? A. Yes.

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Mr. Starkey: Your Honor, before the examination proceeds, at this time I object and move to strike the statement of counsel at the time, something about an implication that he did not want to make before the jury. I so move now and ask that counsel be directed not to make statements like that during the course of the trial.

The Court: I don't know what Mr. Pogoda had on his mind at the time but I would like to get on with this cross-examination.

Q. Then on February 12, 1958, you were not here in New York and you had no narcotics in your possession? A. No.

Q. And this is the only charge pending against you as a result of your arrest, isn't that so? A. The only charge pending against me? I have a number of cases in the city building pending against me.

The Court: A number of cases pending against him in the city building.

Q. Before Mr. Starkey called in the stenographer how long did you spend with him? A. I don't know exact the time. About half an hour, 45 minutes.

Q. And during this time did Mr. Starkey show you pictures of various people? A. Yes.

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Q. Did he call them by name? A. Did he call them by name?

Q. Yes. A. Yes.

Q. He showed you a picture of Duke and he said "Do you know Duke?" Is that the way he did it? A. I think Agent Murphy asked me that.

Q. Agent Murphy showed you the pictures? A. Yes.

Q. This was only six weeks ago. A. When I was downtown.

Q. And he asked you whether you knew Duke? A. Yes.

Q. Then he showed you a picture of Icky Thorn and asked you whether you knew Icky Thorn? A. Yes.

Q. And as he showed you the pictures he told you who the man was? A. Yes.

Q. You knew him? A. Yes.

Mr. Starkey: Just one moment, your Honor. That was a double question and I want to make sure what

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the witness' answer was, whether or not he knew them or whether he was told at the time the picture was shown to him the identity of the individual.

The Court: Well, the witness said he knew them, as far as the record shows, as far as my understanding of the statement was.

Mr. Starkey: The answer was after two questions were asked, your Honor.

The Court: Let's proceed with this cross-examination, if you don't mind.

Q. Now you told Mr. Starkey everything you told us on the witness stand yesterday and today before the stenog-

rapher was called into his office, isn't that so? A. I don't know.

Q. Well now, tell us what you discussed with Mr. Starkey before he called in the stenographer. A. I was talking to Agent Murphy and Mr. Starkey.

Q. All right, tell us what you said, what Mr. Starkey said and what Agent Murphy said. A. I was told what I was being charged with.

Q. Were you told that it was February 12th that you had six ounces of cocaine? A. No.

Q. Well, what were you told you were being charged

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with? A. Violating the Narcotic Act.

Q. Did they tell you what specific thing you did on what date, when and where? A. No.

Q. They said you were charged with narcotics. A. Violating the Narcotic Act.

Q. Did you tell them you had no narcotics on you when you were arrested? A. Yes. They searched me. They didn't find any.

Q. At the point they told you you were charged with narcotics didn't you tell them that you had no narcotics, they didn't catch you with any narcotics? A. No, I don't think.

Q. You knew they had nothing on you, didn't you?

Mr. Starkey: Objection.

The Court: How did he know what the government had on him?

Mr. Pogoda: He has been in this situation before, Judge.

Mr. Starkey: I will object to comments of counsel also, your Honor.

Leon Ellis—for Government—Cross

The Court: I sustain the objection and instruct the jury to disregard counsel's comment. Proceed.

Q. What else was said? A. (No response.)

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Q. Before the stenographer was called in. A. He just asked me about these pictures and how long I knowed them, and what kind of dealings I had with them.

Q. And what did you tell them? A. I told the district attorney that I wanted to tell the truth about everything that I know about this.

Q. Did you tell the truth? A. The best of my ability and the best I can remember at that time, yes.

Q. This is before the stenographer was called in now, did you tell them everything? A. No, it wasn't before.

Q. After you said you would tell the truth didn't you tell them; did they ask you what did you do about each of the men? A. I don't understand.

Q. Did they ask you what you knew about each of the people whose pictures they showed you? A. Well, they asked me what connection I had with those people.

Q. And you told them the connection you had with these

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people, isn't that so? A. Well, the best I could remember at that time, but as I thought back I thought of a lot of more—

Q. I am now speaking before the stenographer was called in. A. No.

Q. At that point didn't you discuss what you knew to the best of your ability? A. No.

Q. You mean before the stenographer was called in you did not tell Mr. Starkey or Agent Murphy any facts, how long you knew Icky Thorn, how long you knew Jesse Col-

son, how long you knew Duke, and things like that? A. I don't think so.

Q. Now do you remember before we recessed this morning I asked you whether or not Mr. Starkey asked you or whether you were asked, do you know Duke, and you said you were not asked, do you remember I put that question to you before we went out for lunch?

Mr. Starkey: Your Honor, at this time I will object to counsel characterizing testimony unless he is going to read the question and the answer. That is not my recollection of the witness' response at that time and I am going to object to characterizations of that kind.

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The Court: Make your point in some other way. You always get into difficulty when you try to remember previous testimony.

Mr. Pogoda: Each time I ask a question about which there is a conflict Mr. Starkey is on his feet trying to straighten out the witness.

Mr. Starkey: I object to such a remark and ask the Court to reprimand.

The Court: Mr. Pogoda, please desist from making remarks of that kind.

Q. Before we went out to lunch do you recall I had this piece of paper which I showed you, do you remember that? A. Yes.

Q. And don't you recall I asked you whether or not Mr. Starkey asked you if you know Maxie, did you know Hawk, did you know Purry, did you know Duke, do you remember I asked you those questions? A. Yes.

Q. And didn't you tell this Court and jury that you were not asked those questions, those names? A. I don't remember.

Q. You don't remember that I asked you the question? You don't remember I asked you the question? A. I re-

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member you asked me something like that but I don't know direct what it was.

Q. Will you look at that and tell us what names are on there?

Mr. Starkey: Your Honor, if counsel wants the document read to the jury I think that should be done. I am not clear at this point whether or not what this witness sees on those papers has to do with it.

Q. Can you read the names? A. No, I would like to read them, sir.

Q. You can't read, can you? A. Sure I can read, some.

Q. Can you read at all? A. Yes.

Mr. Pogoda: May I have the original statement.

Q. I show you this paper, Court's Exhibit 11 for identification, and ask you whether or not you had this paper in your hand this morning? A. Yes.

Q. Did you go through the pages as if you were reading them this morning? A. Yes, various things.

Q. Mr. Ellis, will you please read the first question there?

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Mr. Starkey: Your Honor, I don't think that document is in evidence.

Mr. Pogoda: I will offer it in evidence.

Mr. Starkey: May I check that, Mr. Witness, and see if—no, it is not. It is marked Court's Exhibit 11 for identification. The government has no objection.

The Court: Received.

(Court's Exhibit 11 for identification now Defendant's Exhibit E in evidence.)

The Court: All right, give it back to the witness, please. You want him to read the first question.

Mr. Pogoda: Yes.

The Court: Do you want him to read it aloud?

The Witness: "You gave a statement where you answered some questions that I asked you on that 25, 1961, in this office with Agent Murphy also present and same lady taking the notes on that occasion. Do you recall that? Yes."

Q. Now, Mr. Ellis, on this day that you were being questioned by Mr. Starkey in the presence of Agent Murphy you were asked a lot of questions, am I right? A. Yes.

Q. And the answers you gave on that first day, that

you read, that were typed up, were they true or were they not true? A. Well, they was true to the best of my ability at that time and a few days later I remembered things that had happened and I came and told Mr. Murphy about them.

Q. Well now, you were in court that same afternoon that you saw Mr. Starkey, isn't that so? A. Yes.

Q. When this affidavit which I told you about was read to you before the commissioner, am I right, that affidavit? A. Yes.

Q. Now, did you see Mr. Starkey the following day? A. I don't think so.

Q. Did you go home that night? A. Yes.

Q. Back to your own home? A. Yes.

Q. At 140th Street? A. Yes.

Q. And when was the next time you saw Mr. Starkey

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or Agent Murphy? A. I would say the next couple of days.

Q. In this building? A. Yes.

Q. Did they call in a woman stenographer that time? A. No.

Q. When did they call in a woman stenographer? After how many times?

Withdrawn.

When did they call in a woman stenographer the second time? A. For the identification of a picture.

Q. When? A. I don't know the date.

Q. No idea of the date? A. No.

Q. A week later, after you were arrested? A. It was probably three or four weeks, or five weeks.

Q. Now, from April 24th when you were arrested until today you cannot tell us now when for the second time a woman stenographer was called in to Mr. Starkey's office? A. Not the direct date, no.

Q. Can you give us—was it this week?

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The Court: I think he has answered the question. He said four or five weeks after the first time, as I understand his answer.

A. That's right, sir.

The Court: Is that your answer?

The Witness: Yes, sir.

The Court: That is what he said.

Q. How many times had you seen Mr. Starkey and Mr. Finbarr between the time there was the first stenographer and the second time? A. I would say six or seven times.

Q. And what happened on each of these visits? A. Well, the things that came to my mind, and I know that I did them, I came down and told them.

Q. You came down to this building voluntarily? A. Yes.

Q. To offer information to Mr. Starkey and to Mr. Murphy? A. Yes. Your Honor, could I make a statement, please?

Mr. Pogoda: I am going to object to any statements unless it is responsive to a question.

The Court: Suppose you just answer the question and then you can consult with Mr. Starkey and maybe he will want to ask you a question about that.

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Q. Now, did you change your recollection of things that happened on each visit, or some of the visits? A. Well, the things that I remember, and I remember them a little clearer, I tried to straighten them out and tell him the best that I know about it later. I voluntarily came down and told him.

Q. Did Mr. Starkey or Mr. Murphy fill you in on information you had forgotten? A. No.

Q. They never suggested any information to you? A. No. Mr. Colson did.

Q. Mr. Colson did? A. Yes.

Q. Where did you meet Mr. Colson? A. This is Jesse Colson. Where did I meet him at?

Q. Yes. A. Down in the office.

Q. Mr. Starkey's office? A. Yes, sir.

Q. How many times did you see Mr. Colson down in Mr. Starkey's office? A. Three or four times.

Q. Did you go over the case with Mr. Colson in the

presence of Mr. Starkey and Mr. Murphy? A. No. We was in another room.

Q. Now when you went back over the case with Mr. Murphy and Mr. Starkey, was Jesse Colson along with you?

The Court: Were you all in the same room?

The Witness: Yes. Once or twice, yes, in the same room.

Q. And when you were talking, Jesse corrected you and when Jesse talked you corrected him? A. Jesse would ask me—he don't think it was like this; he think it was like this. And as he talked, it came back to me and I said yes, it was like that.

Q. So that you and Jesse Colson were in Mr. Starkey's office preparing to testify in this case, right? A. I don't know. I don't recall that, no.

Q. Wasn't the purpose for you and Jesse to be there at the same time, to rehearse so you could both come into court and tell the very same story? A. No, sir.

Mr. Starkey: I will object, your Honor. I don't see how the witness could be asked to know the purpose of his visit to the office.

Leon Ellis—for Government—Cross

The Court: The witness said no anyway so let's proceed.

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Q. Now, when you came down to Mr. Starkey's office the first time that you saw Jesse Colson did you know Jesse Colon was going to be there? A. No.

Q. Now, when you left that day did Mr. Starkey or Mr. Murphy say to you, "Come back here on this day"? In other words, was there an appointment made for a specific day and time for you to return to Mr. Starkey's office? A. Agent Murphy would tell me that he wanted to see me.

Q. He told you when? A. (No response.)

Q. He told you when he wanted to see you? A. He said, "Come by the office."

Q. And wasn't Jesse Colson there? Wasn't he told to come back at the same time? A. I don't know. We wasn't there at the same time.

Q. But you came back a second time and you found Jesse Colson there? A. Yes.

Q. And you came back a third time and found Jesse there? A. Well, it was three or four times.

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Q. That's right. How recently was the last time that you and Jesse Colson were there? A. We wasn't in the office talking but we was outside the office.

Q. When, for the last time—the last time you saw him. A. I think it was last Wednesday morning, him and his lawyer came in.

Q. Did you see him there Tuesday? A. (No response.)

Q. The day before that? A. No.

Q. Did you see him on that Monday? A. No.

Leon Ellis—for Government—Cross

Q. Did you see him the previous Friday? A. I don't remember.

Q. All right. When was the time before last Wednesday that you saw Jesse Colson in this building near Mr. Starkey's office? A. The time before last Wednesday?

Q. Yes. That was the last time you saw him? A. Would you mind repeating your question, please.

Q. You saw him last Wednesday, is that correct? A. Yes.

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Q. When before then did you see him in Mr. Starkey's office? A. I think it was—it was that following Thursday.

Q. You mean the previous Thursday? A. Yes.

Q. The Thursday before last Wednesday? A. That's right.

Q. When was the time before that? A. I don't remember exact. Maybe a couple of days before that last time.

Q. Now, Mr. Ellis, can you tell me where it was that you first spoke to Jesse Colson uptown? A. It was on 140th Street, on the corner.

Q. In front of Carter's Bar? A. No. In front of the High Hat.

Q. In front of what? A. The High Hat Bar and Grill.

Q. Are you a customer there too? A. I am a customer around the neighborhood.

Q. A customer of all the bars uptown? A. No.

Q. How many bars do you go into uptown? A. Just about as many as I feel like going if I have enough money

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to go into them.

Q. Do you do business in these bars? A. What kind of business?

Q. Narcotics business. A. No.

Q. Policy business? A. No.

Q. Did you do policy business there?

Mr. Starkey: Objection.

The Court: Well, we keep going back to the policy business and I don't think it has anything to do with this trial.

Mr. Pogoda: On credibility, Judge, as to what this fellow does for a living and how he earns his living.

The Court: We have been doing that for several hours now. I think the jury is interested in this case and I assume you are too so let's proceed to discuss this case.

Q. At what time of day or night was it? A. When I first met Colson?

Q. Yes. A. It was in the afternoon.

Q. Did you walk up to him or did he come up to you?

A. No. I had been seeing him with a friend of mine and we just came up in the conversation.

Q. Tell us how you approached him and what you said. A. Well, there was a gang of fellows around the circus talking, in other words it wasn't an introduction then.

Q. What were the first words you said to Jesse Colson? A. What was the first words I said?

Q. Yes. A. I don't remember.

Q. Well, how did you get involved in this discussion about narcotics with him? A. I asked him.

Q. Where? A. Where?

He had a rented car and I was in the car.

Q. Well, now, you were standing on the sidewalk in a group when you first saw him, am I right?

Mr. Starkey: Your Honor, I ask the witness first of all not to answer until I state my objection. But your Honor, counsel is switching back and forth. He is asking about a cocaine conversation and the first

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time he ever talked to him. Now I ask that counsel not confuse the witness and to make his questions clear.

Mr. Pogoda: I object to the characterization of my confusing the witness. That is a gratuitous statement that I think is uncalled for.

The Court: All right, sir. The jury will disregard counsel's statement with reference to confusing the witness.

Now let's get back to the first time you talked to Colson. Now, when did you talk to him? Where was this?

The Witness: On the corner of 140th Street.

The Court: And where was he and where were you?

The Witness: Five or six people was there—

The Court: Were you standing on the corner?

The Witness: Yes.

The Court: Sitting on the corner?

The Witness: Standing.

The Court: That is when you saw him first?

The Witness: Yes.

The Court: After you talked to him on the corner for awhile did you leave the corner?

The Witness: Yes.

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The Court: And then you went where?

The Witness: I was around the area.

The Court: Where did you get into a car?

The Witness: This was later.

The Court: That was a different occasion altogether?

The Witness: Yes.

The Court: I think you should clarify that.

Mr. Pogoda: I have no objection to that.

Q. The first time you saw Jesse Colson and spoke with him there was no talk about cocaine? A. No.

Q. No talk about working for him? A. No talk about what?

Q. No talk about working for him so that you could make some extra money. A. No.

Q. When was this, the latter part of November? A. When I first met him?

Q. Yes. A. Well, I don't know. It was in the fall of the year.

Q. In the fall of the year? A. Yes.

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Q. When you say the fall of the year would you say it was November or October or September? Which? A. September or October or November. One of those months in there. I met him around about September as close as I can get to it.

Q. You can't tell us now whether it was September, October, November or December?

The Court: He said that he thinks it is September now. He said it was the fall but he thinks it was September. Now let's get on to something else.

Mr. Pogoda: May we have the Court's indulgence for one moment?

The Court: Yes.

(A pause.)

Q. When you first met Jesse Colson in the fall of the year, say September, did you see him regularly after that? A. I don't remember.

Q. Can you remember the very first time you spoke to him about working for him? A. Well, that was a very dangerous decision to make and those conversations hit you pretty close sometimes.

Q. It wasn't the first time that you spoke to him that

you spoke about narcotics, was it? A. The first time I spoke to him?

Q. Jesse, yes. A. Repeat that, please.

The Court: When did you first offer to work for Jesse? When was this?

The Witness: This was around about October or November, in that period of time.

The Court: All right, take the witness.

Q. Some time in October or some time in November? A. Around about that time, yes.

Q. And this was in what kind of an automobile? A. I think it was a rented car.

Q. A rented car? A. Yes, which you rent.

Q. A small car, a big car, a medium car? A. It was—I don't know the model of the car. It was say a car like about a Chevrolet. A standard car.

Q. It wasn't a big Chrysler Imperial, was it? A. No.

Q. Did Jesse own a Chrysler Imperial? A. I don't know.

Q. Do you know what a Chrysler Imperial is? A. Yes.

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Q. It wasn't that sort of a car? A. No.

Q. Well now, after you spoke to him, first, about working for him in the narcotics business, how soon after that first conversation did you start doing business for him? A. Around the last of November or the first of December, around there.

Q. Well, how long a period, how many weeks or months was it after the first conversation when you got the first customer for Jesse Colson? A. Would you repeat that?

The Court: How long after you first talked to him about selling narcotics for him did you get him the first customer?

The Witness: (No response.)

The Court: A week or a month or what?

The Witness: Around about four or five weeks, I would say, in that length of time. That is the best I can remember right now.

Q. Now during this four or five weeks did you see Jesse subsequently? A. No.

Q. Did you see him at all? A. Yes.

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Q. How many times would you say you saw him? A. Well, I used to see him coming by the avenue. I can't remember how many times I seen him.

Q. In October or November? A. Yes.

Q. Right? A. Yes.

Mr. Pogoda: May the record show, if the Court please—this, I don't know the exhibit number—oh, yes, Exhibit 21—that the defendant Jesse Colson—

Mr. Starkey: Your Honor—

Mr. Pogoda: It is in evidence. I want to call it to the jury's attention.

Mr. Starkey: Your Honor, I suggest that there is a time for summation and there is a time for examing witnesses, and reading documents. I object to this procedure.

The Court: You will be able to call that to the jury's attention but we want to get rid of this cross-examination first.

Mr. Pogoda: I think at this time I should be permitted to read to the jury something that is in evidence which is conflicting with the witness' testimony.

The Court: You can do that at the proper time.

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Mr. Pogoda: I respectfully except to the Court's ruling.

The Court: All right, sir.

Q. Now tell us, where did you meet this fellow Tillie? A. I met him on the avenue.

Q. Where on the avenue? A. Well, listen, he was a fellow I saw him just about constantly, the biggest portion of the day.

Q. Was he a policy player? A. What?

Q. Was he a policy player? A. I don't know.

Q. Did he play policy with you? A. No.

Q. Was this arrangement made in the cleaning store that your godmother operated? A. No.

Q. After this conversation with Colson you were on the street looking for customers, am I right, to push the stuff? A. Yes.

Q. You were out to make some money in this business? A. Yes.

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Q. And you ran across Tillie, right? A. Yes.

Q. How did you get involved in the conversation with Tillie? A. Tillie saw me and he said, "Man, you are riding around with the man bringing the good coke in."

Mr. Somers: I can't hear that.

A. Tillie told me that I was riding around with the man that was bringing the good coke in. I told him, "Yes, that's my man." He said, "What about getting me some," or something like that. I said, "Yes," I said, "If you get some dough I will fix it up so that you can get some."

Q. Now at that time did he ask you how much it was an ounce? A. I don't remember.

Q. You were selling something, didn't he want to know the price of what you were selling? A. He wanted to know how much was a spoon.

Q. Did he ask you? A. Yes.

Q. How much is it a spoon? A. $50 a spoon.

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Q. Who told you that? A. My boss, who I was working for told me that, Jesse Colson.

Q. Did he tell you how much it was an ounce? A. Yes, later on, yes.

Q. Did he tell you how many spoons there was in an ounce? A. Yes.

Q. How many? A. 16.

Q. Did you ever measure them out? A. Yes.

Q. When? A. (No response.)

Q. When for the first time? A. Well, when we first got a kilo from Chile.

Q. That was in September of 1958? A. Yes.

Leon Ellis—for Government—Cross

Q. Almost a year after this conversation? A. Yes.

Q. And after you had gone through freeze tests to test the purity of cocaine, that was the first time you ever measured out any cocaine? A. Yes.

Q. Now, when for the first time did you discuss with

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Jesse Colson how much you were to be paid? A. He told me how much I was going to get.

Q. What did he tell you? A. He told me I get 10 per cent.

Q. Did he tell you that the first time you spoke to him about working for him? A. No.

Q. Did he tell youthat after you came back and told him that you had a customer? A. No.

Q. When did he tell it to you? A. When I sold the package of cocaine at one time.

Q. The package to Tillie? A. No.

Q. To whom? A. To Leon.

Q. You mean at the time you made this first sale to Tillie you did not know how much you were going to be paid for making this sale? A. No.

Q. Were you interested in finding out how much you were to make? A. No, not at that time.

Q. You got into this business for the purpose of making

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money, did you not? A. Yes.

Q. And now you say that at the time you made the sale to Tillie you did not know what your cut was? A. No.

Q. At this time you were in the policy business, were you not?

Mr. Starkey: Objection, your Honor.

Mr. Pogoda: I am making a point if the Court please. It is only one question on that.

Q. You were in the policy business, right? A. Well, I don't know whether you call it the business.

Q. You were taking numbers? A. I was a pickup boy.

Q. Before you got into that did you find out how much your commission was, or what your percentage was? A. Why my percentage was?

Q. Yes. A. Well, everybody knows what percentage is.

Q. That's right. But in this first sale you did not know what your commission was at the time you made the sale? A. No.

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Q. You knew it was a dangerous business, did you not? A. Yes.

The Court: Well, sir, we have been through it now. He said he did not know. He answered about five or six different kinds of ways. He did not know. Let's get on with the case. The jury understands the question and the answer.

Q. Now after you made contact with Tillie, how did you get in touch with Jesse Colson? A. I called him on the telephone.

Q. When did he give you his phone number? A. I don't know. While we was talking he gave me his phone number. I don't know exact when.

Q. Did you write it down anywhere? A. Yes, I had it.

Q. In an address book? A. No.

Q. Where would you write it down? A. On a card.

Q. Did you call that number many times? A. Yes.

Q. How many times in all would you say you called that number? A. I don't know.

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Q. A hundred times? A. I don't remember.

Q. Could it have been more than a hundred times? A. I don't remember.

Q. It was a great many times, though, wasn't it? A. I don't remember.

Q. You don't remember whether it was a great many times or not? A. What do you call a great many times?

Q. I am asking you.

Mr. Starkey: Your Honor—

A. I don't remember.

Mr. Starkey: —I think the witness is entitled to know what counsel means by that.

The Court: Would you say 10, 20, 50 times?

The Witness: I would say about 75 or 80 times.

The Court: 75 or 80 times.

Q. Do you remember the number now? A. No.

Q. Well now, you called Jesse Colson, and what did you say to him on the telephone? A. I said "I got a man who wants to do some business."

He asked me "How much? How much money he got?" I said "He got $300." And I said "But the man, he want

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to come to the house with me."

Jesse says "No good." He said "He can't come to the house. If he can't trust you forget about it," or a similar thing like that.

Q. And then what did you do? A. I told Tillie what my instructions were.

Q. Did Tillie ask you how much stuff he was going to get for the $300? A. It was half a piece, I think.

Q. Half a piece? A. Yes, he wanted a half a piece.

Q. How much is a half a piece? A. It is eight spoons.

Q. For $300? A. Yes.

Q. Wasn't it $50 a spoon, the price? A. Yes.

Q. Did you tell that to Colson, this man wanted half a piece for $300? A. No, I didn't.

Q. How much would eight spoons cost? A. Eight spoons?

Q. Yes. A. Buying it in the individual spoons?

Q. Yes. A. $400.

Q. And you were giving this man Tillie a wholesale rate? A. I wasn't giving him anything. Jesse made the package. When I gave him the $300 he made—he had a package, he made a package, and—

Q. Were you there when he made the package? A. No. He was in the kitchen making the package. I was in the apartment, yes.

Q. Now after you told Tillie that Jesse wanted the cash first you arranged to get the money from Tillie, am I right? A. (No response.)

Q. Isn't that so, you got the money from Tillie? A. I told Tillie if he can't trust me there is no deal. So he gave me the money.

Q. All right. Now you went up to Jesse's house to pick up the package? A. We was on 225th Street and Jesse lived in the project, and it wouldn't be up—I think it would be down, you know, from 225th Street on the same block.

Q. You went from 140th Street where you lived to 225th

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Street? A. Yes.

Q. That is in the Bronx, isn't it? A. I went from 141st Street to 225th Street?

Q. Was that 225th Street in the Bronx? A. Yes.

Q. How did you go there? A. By cab.

Q. And you gave Jesse the $300? A. Yes.

Q. You got the half a piece? A. Yes.

Q. Did you take the same cab back downtown? A. No.

Q. How did you come back downtown? A. I came back to the bar and picked up Tillie and got another cab and came back downtown.

Q. Did Jesse give you the money for the cab fare? A. Yes.

Q. When you got there Jesse gave you the money for the cab fare, when you got up to 225th Street, am I right? A. (No response.)

Q. Now let me ask you this: didn't you tell this Court and jury the stash was down on Park Avenue? A. That was another time.

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Q. You mean Jesse— A. We had the stash all around.

Q. Jesse had the stash in different places? A. Right.

Q. And he also kept stuff in his home? A. Well, a long time ago, but this time, yes.

Q. Now, did you see the package before Jesse taped it up or wrapped it up? A. No.

Q. You had never done business with Jesse before, had you? A. No.

Q. You don't know what Jesse was giving you for your $300, do you? A. No.

Q. You were responsible to Tillie for the $300, if it turned out the stuff that you received from Jesse was not cocaine, isn't that so? A. (No response.)

Mr. Pogoda: I withdraw the question.

Mr. Starkey: I submit that he should be permitted to answer the question.

The Court: He has a right to conduct his own examination.

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Q. You were trusted by Tillie with $300, isn't that so? A. Yes.

Q. And now you gave Jesse the $300 without knowing what was in that jar or package that he gave you, isn't that so? A. Yes.

Q. So now you were trusting Jesse with the $300, am I right? A. Yes.

Q. Until this time did you know what cocaine looked like? A. Until which time?

Q. The time, this first transaction, did you know what cocaine looked like? A. Yes.

Q. Where had you seen cocaine before this? A. I had seen it a lot of places before this.

Q. All through town and did you see it on store shelves? A. No, I said a lot of places.

Q. Where? What kinds of places? A. Different places.

Q. Places that you would go to? A. Well, I had to be

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at these places to see it, yes.

Q. So that before you ever got involved with Jesse in the narcotic business you were very familiar with this narcotic business? A. Well, I wouldn't say familiar with it but I know what it looked like.

Q. And you went around to places where they had a lot of narcotics? A. Well, I went places but I don't know how much they had, that they was handling. I went places and I saw people that used cocaine, you know, and I have seen it before then.

Q. And this was in a lot of places? A. Yes. Around three or four years, yes.

Q. Well, now, this is before the transaction with Tillie you told the Court and jury now, did you not, that you went around a lot of places where there was narcotics? A. Well, listen, I didn't go around looking for narcotics. I just happened to see people using it and it would be around me, and I saw what it looked like.

Q. So that was when you decided this is a good business to get into, is that it? A. I didn't decide. It just happened. It was one of those things that just happened.

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Q. Did you say habit? A. No, happened.

Q. Jesse didn't approach you to get into the business, did he?

Mr. Starkey: Your Honor, I will object. I think the witness' testimony is clear in that regard.

Mr. Pogoda: It is unimportant.

Q. Now, Mr. Ellis, you got the package from Jesse and you came downtown, right? A. Yes.

Q. Where did you go with that package? A. Well, we came by, we stopped at the Woodside Hotel, and Tillie told me that he was going around 140th Street between Seventh and Eighth Avenue to a friend's house.

Q. When you left Jesse's house did you have an appointment to meet Tillie at the Woodside Bar, at the Woodside Hotel? A. I picked Tillie up at 225th Street where we went the first place and we came back downtown.

Q. So that Tillie was waiting for you at 225th Street when you picked up this package, right? A. He was in the bar waiting for me, yes.

Q. I ask you if you were not asked this question on di-

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rect examination and did not make this answer:

"Q. Now after you left Jessee's apartment, what did you do? A. I came back to the bar and picked up Tillie."

Now—

Mr. Starkey: Your Honor—
Mr. Pogoda: May I continue, Mr. Starkey?
The Court: Let him ask his question.

Q. Was this bar up at 225th Street or was it in Harlem? A. Would you mind repeating your question?

Q. Your answer was that after you left Jesse's apartment you went back to the bar and picked up Tillie.

Now, was Tillie in the bar at 225th Street or was in a bar in Harlem? A. He was in a bar at 225th Street.

Q. So that Tillie went up to 225th Street in a taxicab with you? A. Yes.

Q. Right? A. Yes.

Q. Did you give Tillie the package at 225th Street? A. I don't remember.

Q. Well, he already paid you for this package, isn't

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that so? A. Yes.

Q. And after paying you for the package and you picked up the package you did not give it to him in the taxicab on the way back? A. I don't remember.

Q. Or in the bar? A. I don't remember.

Q. Right. A. No, not in the bar.

Q. Now, you picked up the package for Tillie, am I right? A. Yes, sir.

Q. And you saw Tillie at 225th Street? A. Yes, sir.

Q. And you did not give him the package at 225th Street? A. I don't remember.

Q. You mean you don't remember whether you gave him the package or you did not give him the package at 225th Street? A. I don't remember where I gave him the package or whether I brought the package down in the cab.

Q. Well, now, your purpose in going up to 225th Street

was to buy the package for him, wasn't it?

Mr. Starkey: Your Honor, I submit that this area has been well covered and that this is repetitious.

The Court: Do you remember where you gave the package to Tillie?

The Witness: Not exact, your Honor.

The Court: Well, it was somewhere between 225th Street and where? Where did you go with Tillie after you left—

The Witness: We came to the Woodside Hotel.

The Court: Which is where?

The Witness: 141st Street and Seventh Avenue.

The Court: Where did you leave Tillie?

The Witness: I went—we went in the hotel and Tillie said "I forgot. I got to go around here on 141st Street." And we went around to 141st Street, me and Tillie, I don't who had the package at that time. I know when we got upstairs we had the package, one of us had the package.

The Court: When you got around to 141st Street?

The Witness: Yes, sir.

Q. So that you don't know whether you gave the package to Tillie at 225th Street or at the Woodside Hotel or at

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this house on 141st Street? A. I know the package was there at 141st Street. I don't know which place I gave it to him at.

The Court: He says he doesn't know which one.

Q. Now will you tell the Court and jury, if you will, Mr. Ellis, why you continued to be in Tillie's presence after you consummated the sale and delivery of this cocaine? A. Why?

Q. Yes. A. He told me to wait because Leon was coming by.

Q. When did he tell you this? A. In the Hotel he told me he wanted me to wait and go around to this house with him because Leon was coming around there.

Q. You didn't know about Leon until you got back with the package? A. I didn't understand this?

Q. You didn't know about Leon until you got—came back to the Woodside Hotel, right? A. No.

Q. And then you left the Woodside Hotel and went to this house at 141st Street between Seventh and Eighth Avenue? A. Yes.

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Mr. Carluccio: If the Court please, may we have a late afternoon recess for the benefit of the stenographer if not the—

The Court: Maybe counsel is about finished his cross-examination.

Mr. Pogoda: I don't think I will be through with him this afternoon yet, Judge.

The Court: All right, we will take a five-minute recess.

(Recess.)

(Jury present.)

LEON ELLIS resumed.

By Mr. Pogoda:

Q. Now you went around 141st Street between Seventh and Eighth Avenue with Tillie, right? A. Yes, sir.

Q. And you waited there for Leon? A. We went up to the apartment and waited.

Q. That is where you waited for Leon? A. Yes.

Q. How long? A. 15 or 20 minutes.

Q. Between the time you left 225th Street and the time that Leon came into this apartment, was Tillie with you

all the time? A. Yes.

Q. Did he make any telephone calls? A. No, I didn't. I don't remember him making any.

Q. He was with you, am I right? A. Yes, we was in the same room.

Q. Right. No. I am now speaking from the time you got the package from Jesse Colson and you met Tillie in a bar, he was with you until Leon came into the apartment at 141st Street and Seventh and Eighth Avenue? A. Yes.

Q. He didn't make any telephone calls during that period, did he? A. I don't remember.

Q. Well, did he or did he not?

Mr. Starkey: Objection.

A. I don't remember.

The Court: He said he doesn't remember. Proceed.

Q. You don't remember at all what happened as far as Tillie is concerned from the time that you left the bar?

Mr. Starkey: Your Honor—

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Mr. Pogoda: Withdrawn.

Q. In any event you don't remember every detail between the time you left 225th Street and the time you got into the apartment at 141st Street between Seventh and Eighth Avenue, right? A. Yes, one incident I remember. I remember Tillie opening the package and said he was going to get him a little freeze.

Q. Where did he open the package? A. In the room where we was?

Q. You mean at 141st Street? A. Yes.

Q. That is while you were waiting for Leon to come? A. Yes.

Q. You had no appointment with Leon, did you? A. No.

Q. Tillie didn't mention Leon to you, did he? A. Until we got back to the Woodside Hotel.

Q. That is the first time he mentioned Leon? A. Yes.

Q. Did you ask him who Leon was? A. No.

Q. You were not afraid of a pinch yourself with the stuff? A. You are always afraid of a pinch, yes.

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Q. As a matter of fact, from the very moment you picked up the stuff until you get rid of it you are worried about a pinch, isn't that so? A. Yes.

Q. And being worried about a pinch you went from 225th Street in a bar to the Woodside Hotel and around the corner to 141st Street between Seventh and Eighth Avenue and you were with the stuff waiting for Leon to come? A. Me and Tillie was together.

Q. Yes, with the stuff? A. Yes.

Q. Now, what did you do at the Woodside Hotel? A. What did I do?

Q. Yes. A. Well, I went to Tillie's room and Tillie opened the door and he said "I got to go around to 141st Street, come on."

Q. You mean you just walked into Tillie's room and then when you got into Tillie's room he said "I have got to go to 141st Street between Seventh and Eighth Avenue"? A. Yes, right around the corner from the hotel.

Q. Did he change his clothes? A. No.

Q. Did he do anything while he was in his room? A. No.

Q. How long did you stay in the room? A. He just opened the door and looked and said "I got to go around to 141st Street."

Q. You were worried about a pinch then too, weren't you? A. You are always worried about a pinch.

Q. You had already gotten your money and delivered the package? A. Yes, if you call it that. I got cab fare. I got five or ten dollars, something like that.

Q. How long had you waited at 141st Street before Leon came in? A. About 15 or 20 minutes.

Q. Did you know Leon when you saw him? A. Yes.

Q. Did you call him by name? A. (No response.)

Q. Did you say "How are you Leon?" A. When he came up?

Q. Yes. A. No. I just said "Hi."

Q. How long did you know him? A. Oh, I had been

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seeing him around eight or nine years, ten years.

Q. How long had you been talking to him? A. Not talking to him. I used to speak to him and say hello.

Q. Well, where would you see Leon? A. Where would I see Leon?

Q. Yes. A. In the street.

Q. Did you know what business he was in? A. No.

Q. You knew nothing about him? A. Not as far as his personal life, no.

Q. You knew him about eight or nine years? A. Yes.

Q. And you knew Colson for how long before you heard he was in the narcotics business? A. How long did I know him?

Q. Yes. A. Before I heard that he was in the narcotic business?

Q. Yes. A. I heard he was in the narcotic business before I knew him.

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Q. What year? A. It was '56, the last of '56.

Q. So that you knew Colson was in the narcotics business in 1956? A. I didn't know he was in the narcotics business. I heard that he was in the narcotic business.

Q. When did you meet him for the first time? A. I didn't understand you.

Q. When did you meet him? What year? A. '57.

Q. Now tell us again, if you will, Mr. Ellis, what happened in this room, this apartment building at 141st Street between Seventh and Eighth Avenue? A. What happened in the room?

Q. Yes. A. (No response.)

Q. After Leon came in? A. Well, he asked Tillie if he could get the stuff and Tillie said "Yes."

Q. I didn't hear you. A. He asked Tillie did he get the stuff and Tillie said "Yes," and Tillie gave him the package, and he measured it. And he told me that it was a little short.

Q. Who measured it? A. Leon.

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Q. With what? A. A spoon.

Q. Was this in the kitchen? A. No. I don't know whether it was in the kitchen or in the room. He was in a small room, I remember that.

Q. Did they have silverware in there? A. I don't remember.

Q. What kind of a spoon did he use? A. A teaspoon.

Q. Where was the lady? A. I don't know. She was up in the room, I guess.

Q. In the same room? A. No.

Q. All right. Now after he measured it he said it was a little short, right? A. Yes.

Q. How much short was it? A. He just said "A little short."

Q. You were the salesman, weren't you? A. I didn't even know how to measure it then.

Q. You had been around narcotics before this, am I right?

—890—

Mr. Starkey: Objection.

The Court: We have been over this before. Just ask him the question you want to bring out. Don't keep repeating because I am going to sit here for a long time. In fact I might go into night sessions beginning tonight.

Q. Mr. Ellis, when Leon said it was short didn't you ask him how much short? A. No.

Q. Do you know how many spoons there were? A. No.
Q. You were there, were you not? A. Yes.
Q. This is the stuff you sold, wasn't it?

Mr. Starkey: Objection to these repetitious questions, your Honor.

The Court: I will sustain the objection. Let's get on with the cross-examination, please. Make your points and let the witness go.

Q. Now Ellis, at that point was anything said about making up the shortage? A. Leon said "It's a little short."

—891—

Q. What did you say? A. And Tillie asked me could I get in contact with my man and I told him "No, not tonight," and Leon said "Just forget about it."

Q. What happened then? A. And Tillie asked Leon—he asked Leon where he was going when he left. Leon told him he was going around 36th Street. And Tillie suggested, "Why don't you let Schoolboy take it around for you." and he asked me would I. I said "Yes." and he gave me $15. I took it around to 136th Street.

Q. All right. Now who left the house at this point, first? Who left the house first? A. Who left the house first?

Q. Yes. A. I don't remember.

Q. Well, now, were you told who to bring it to at 136th Street? A. Yes, I was to see him at 136th Street.

Q. Who said this? A. Leon.

Q. Did you go to 136th Street? A. Yes.

Q. Where in 136th Street were you supposed to go? A. Between the block. Around the club.

—892—

Q. You were familiar with 136th Street? A. Yes, I used to go by there on occasion.

Q. How often would you be on 136th Street? A. I wouldn't know how often I would be there.

Q. Can you tell us what type buildings there are on 136th Street? A. Well, there is mostly private houses on 136th Street.

Q. Any public buildings there? A. I wouldn't know.

Q. You wouldn't know? A. I don't know.

Q. Is there a Post Office on that block? A. No.

Q. Is there a library on that street? A. Yes.

Q. Are there any undertaking parlors on that street? A. Yes.

Q. A good many of them? A. Yes. A few. I don't know exact how many there are.

Q. Almost every house on the street across from the library is an undertaking establishment, isn't that so? A. I would say it would be four or five undertakers in the

block. I don't know how many there are.

Q. Now, what side of the street were you supposed to meet him? A. I don't know. In the block.

Q. Did you know what kind of a car to look for? A. No.

Q. And that is a pretty long block from Lenox to Seventh Avenue, isn't that so? A. Well, it's pretty fair.

Q. And you were carrying this cocaine all the time? A. Yes.

Mr. Starkey: Is that a question, your Honor?

The Court: He said "Yes." Let's proceed.

Q. That is down the street from Harlem Hospital, isn't it? A. No.

Q. Well, isn't Harlem Hospital at 136th Street and Lenox Avenue? A. Yes.

Q. And you were right down the street from Harlem Hospital? A. I was up the street from Harlem Hospital.

Q. Well, you were on the other side of the street. You were on the same street as the hospital is on?

—894—

Mr. Starkey: Your Honor, I am not clear as to who is testifying on this point.

The Court: Let's proceed to something else. I assume he is finished with that.

Q. Now where did you get the $15? Who gave you the $15? A. Leon.

Q. In the house? A. Yes.

Q. Well, now, when you were in Mr. Starkey's office were you asked this question by Mr. Starkey and did you make this answer:

"Now did there come a time in the early months of 1958 when Jesse Colson asked you if you knew of anyone who could be a customer for cocaine he was importing? A. I heard that he was dealing and I asked him."

Now was it in 1957 or was it in 1958?

Mr. Starkey: Your Honor, I think the original question was—

Mr. Pogoda: I haven't finished my question.

The Court: Finish it.

Q. Was it in 1957 or was it in 1958—

Mr. Starkey: I object to the form of the question

—895—

at this point even if he is not finished.

The Court: That is overruled. Finish the question.

Q. —that you first spoke to Jesse Colson about working for him?

The Court: Now what is the objection?

Mr. Starkey: The objection is, your Honor, I object to the form. The question was were you asked this question and did you give this answer, and the witness has not yet answered that previous question. It is at least a double question.

Mr. Pogoda: Then I am sorry. I will ask the question over.

The Court: I think we have been over this many, many times.

Mr. Pogoda: No, we have never been over it.

The Court: No, we have been over this many, many times and we are going to sit here until we finish with this witness.

Mr. Pogoda: I have no objection to that.

Q. Were you asked that question and did you make the answer I read to you? A. Would you mind reading it over again, please?

Q. "Q. Now did there come a time in the early months of

1958 when Jesse Colson asked you if you knew of anyone who could be a customer for cocaine he was importing? A. I heard that he was dealing and I asked him."

Now was that question put to you by Mr. Starkey and did you make that answer? A. I made that answer but it was a mistake at that time. It was a mistake in that year

and I thought about it and I told Mr. Starkey that it was wrong. It was in '57.

Q. Now when did you tell Mr. Starkey you were wrong? A. I don't know exact when. When I looked at that thing there.

Q. How long after this first delivery to Tillie did you have the second contact with anyone working, while you were working for Jesse. A. What do you mean by contact?

Q. The next sale you made. A. Well, the next sale was to Leon.

Q. And how long was that after the first sale? A. I don't know. It was the last of—it was the last of December, around the first of January, somewhere in there.

Q. When did you make that first sale to Tillie again?

—897—

What month was that? A. It was around about the last of November or the first part of December, in that area.

Q. So about a month later— A. In that area of time. I don't know exact what date but that is as close as possible.

Q. In that intervening period you did no other narcotics business? A. No.

Q. Although you had been seeing Jesse right along, isn't that so? A. Yes.

Q. Did Jesse tell you whether or not he had stuff to sell? A. No.

Q. You were seen riding around with Jesse all this time, am I right? A. I don't know. Was I?

Q. Didn't you become fast friends with Jesse after this one deal? A. I don't know.

Q. You mean you never became close friends with Jesse? A. Well, I don't know what you mean by friends, close

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friends.

Q. Well, you were riding together, talking to each other on the telephone, he lent you money to pay bar bills, lent you money to go attend your mother's funeral; didn't you become friends with Jesse?

Mr. Starkey: Objection to the form of the question, your Honor.

The Court: Let's say he became friends with Jesse. Let's move on to something else.

Q. Did you ever become a partner of Jesse's? A. No.

Q. Well, now you were sharing in the profits, were you not?

The Court: I think he testified he was getting 10 per cent of his sales. Now let's get on to something else.

Q. Well now, how did the second sale come about? A. Well, Jesse asked me, at least he told me, he said "I have some coke left." He said "If you can get a person that wants to buy it I would like to get rid of the whole lump sum." I told him "I would look around and see if I could find anybody who was interested."

Q. Well now, you knew you made the first sale to Leon, am I right? A. No.

Q. This sale to Tillie— A. I got the money from Tillie.

Q. You delivered the package to Leon, am I right? A. Yes, from Tillie's—me and Tillie were—

Q. You didn't give it to Tillie, you gave it to Leon at 136th Street?

Mr. Starkey: Your Honor, I object to that form.

The Court: Well, do you remember whether you gave it to Tillie or to Leon or which one?

A. I gave it to Leon on 136th Street.

Q. Now when Jesse spoke to you on this occasion you went back to 136th Street, am I right? A. Yes. I asked a few fellows around and I went to 36th Street and asked Leon—

Q. Where did you find Leon? A. At 136th Street.

Q. In what? A. In the block.

Q. In an automobile, walking on the street, in a house, where? A. I don't know whether he was in an automobile or in a house. I would always see him in that area around

136th Street.

Q. In front of any special building? A. I wouldn't say in front of any special building. He would just be in the block there.

Q. Well, would he be walking up and down the street, standing or sitting or what? A. He would be sitting in his car some time, and sometimes he wouldn't be.

Q. And you approached Leon sitting in his automobile? A. I don't know exact where it was.

Q. Where did you have the conversation with him? A. In 36th Street.

Q. In his car or on the street? A. I don't remember exact.

Q. Was anyone else present at the time? A. When I met Leon?

Q. Yes, when you discussed it with him. A. No.

Q. Well, what was said this time? A. Well, I asked— I told Leon that my man had a package of coke and that

he wanted to get rid of it in one lot, and Leon said, "Is it pure—is it pure?" I think it was.

—901—

Mr. Somers: Can't hear you, Mr. Ellis.

A. "Is it pure," and I said "I think it is." He said "How much is it?" I said "I don't know exact. I will check with Jesse and see how pure it is and is it pure and how much he wants for it."

Q. Was anything said about how much it weighed? A. No.

Q. You didn't discuss the first time that you spoke to Leon how much stuff Jesse had? A. How much did he have?

Q. Yes, or how much you had to sell. A. Well, this was later. It was later on. I told him that I would go to

Q. Do you remember being asked this question on direct examination and making this answer:

Jesse and ask him how much he got and how much he want for it.

> "Q. What did you say and what did he say? A. Well, I asked him, I said, 'My man has got a package of coke,' I said, and he said, 'It's approximately 12 ounces,' and I asked him was he interested in it, if I could get it for him."

Do you remember that question and that answer? A. Yes.

Q. That was true, wasn't it? A. Well, maybe the words,

—902—

the way I was speaking, it was true.

How I remember it at that time that was true.

Leon Ellis—for Government—Cross

Q. This is what you testified to yesterday morning? A. Yes. Do you want me to—

Q. You don't remember now what you said yesterday morning?

Mr. Starkey: Your Honor, I object at this point.

The Court: I think that counsel will concede that what you read is a transcript of the testimony, the reported transcript of the testimony from yesterday. So let's proceed.

Q. "Q. What did Leon say? A. Leon said 'Yes. I will take the whole thing if it's pure,' and I told him, I said 'I didn't know exactly how pure it was but I would see Jesse and find out how much it was and how much did he want for it.'

"Q. Did you talk about price and quantity with Jesse Colson? A. Yes."

Were you asked those questions and did you make those answers? A. Yes.

—903—

Q. Well, now, after you spoke with Jesse and came back, did you have a conversation with Leon? A. Yes, I think I saw him that following night, yes, sir.

Q. And what was said on that occasion? A. And I told him how much he wants and how much Jesse wanted for it.

Q. What did Leon say? A. He told me, he said, "Come by tomorrow night, okay, come by tomorrow night," the next night after dark, or something like that.

Q. And did you come back the next night after dark? A. Yes, sir.

Q. How much did you agree to take from Leon for this transaction? A. How much did I agree to take?

Q. Yes, how much did Leon agree to give you for the package? A. He didn't agree. I told him how much Jesse wanted for it.

Q. And he said "Come back tomorrow night"? A. Yes.

Q. "And then I will give you the money"? A. He didn't

—904—

say nothing about giving him the money. He just said "come by tomorrow night." I told him it was $5,000 and there was approximately 10 to 12 ounces, or similar like that.

Q. What happened after that? Did you come back the next night? A. Yes.

Q. Where did you see him? A. I saw him in 36th Street.

Q. What happened then? A. Well, he gave me $5,000.

Q. Did he say anything to you? A. Yes. He said "I am not going to trust anybody with my money any more because I don't do business like that. I am doing all the trusting," and he said "The next time I do business it's going to be from one hand to the other."

Q. Did he hand you $5,000? A. It was in a bag.

Q. Did you stop to count how much money it was? A. No.

Q. Did you ever tell Leon your name? A. My name?

Q. Yes. A. I don't remember.

—905—

Q. You were known to Tillie as Schoolboy, am I right? A. Yes.

Q. And this is the first time you actually had any business transactions with Leon, you say?

Mr. Starkey: I will object, your Honor. That is not the witness' testimony.

The Court: I sustain the objection. He just testified at length about the prior transaction so let's get on.

Mr. Pogoda: The transaction he testified was with Tillie.

The Court: He testified he gave the cocaine directly to Leon Aiken.

Q. This is the first time you had a direct transaction with Leon, isn't that so? A. Yes.

Q. This is the first time you approached him to do business with him? A. Yes.

Q. And now Leon did not know where you lived, did he? A. I don't know.

—906—

Q. You never told him, did you? A. No.

Q. You were known to Leon as Schoolboy, right? A. Yes.

Q. The only time you had been in his company before negotiating this transaction was up at 141st Street and Seventh Avenue, or in that house between Seventh and Eighth Avenue, isn't that true? A. The first time I had been in his company?

Q. In his company. A. I used to see him around.

Q. You passed him by on the street and you nodded and said "Hello." Did you ever have any business transactions with him before these? A. No.

Q. Had you ever been to his home? A. No.

Q. Did you know where he lived? A. No.

Q. Do you know or did you ever tell him where you lived? A. No.

Q. Based upon this relationship that you have just described Leon gave you $5,000? A. Yes.

—907—

Q. Did you make an appointment to meet again? A. Make what?

Q. Did you make an appointment with Leon as to where to meet? A. I was going to bring him back to the block.

Q. When? A. When I picked up the coke.

Q. Was this day or night? A. Night.

About 7:30 or 8 o'clock, around that time.

Q. A cold night, was it? A. Yes, it was fairly cold.

Q. Where did you go from there? A. I went to 140th Street.

Q. Whom did you meet there? A. Jesse.

Q. And did you drive down in Jesse's car? A. No.

Q. Where did you go? A. (No response.)

Q. How did you go? Where? A. I think it was by cab.

Q. Where did you go from there? A. To 94th Street.

—908—

Q. Now at 94th Street you met Icky there? A. Yes.

Q. Some women there? A. Yes. I didn't meet the women. I only met Icky.

Q. And you told us it was at that point that Icky said he had a customer for things and Jesse said you had—he had the money for the package, am I right? A. I didn't get that first statement.

Q. You tell us what happened in 94th Street. A. Well, when we got in the house, Jesse told Icky, he said, "Here is a man for the package. For the coke." And Icky said, "How much?"

Jesse said, "All of it."

Icky said, "You can't give him all of it because I got a man coming over. He wants some."

And he also said that we could cut it and almost double your money.

Jesse said, "Well, I got cash money in my hand." so he, thought a couple of seconds, and he said, "I didn't think about that." He said, "I tell you what we will do Schoolboy, I will give you half of it for your man and Icky can keep half of it for his man."

—909—

Q. Now when Icky said, "We can cut it and you can double your money," did you know what he meant by that? A. No.

Q. You did not know what he meant by cutting it? A. No.

Q. Did you ask him whether it was pure cocaine? A. (No response.)

Q. Did you ask him whether it was pure cocaine? A. Ask ho?

Q. Jesse. A. He told me it was pure.

Q. Did you speak to him about testing it? A. No.

Q. You knew nothing about testing it for purity and strength? A. No.

Q. Did you see him count out the money that you received? A. Not exactly. I saw him count the money on the bed.

Q. The money was given to you, isn't that so? A. Yes.

Q. That $5,000 was given to you? A. Yes.

—910—

Q. You were responsible for it to Leon? A. Yes.

Q. Didn't you want to make certain that there were $5,000 there? A. Well, Jesse always did that. He always did the counting of the money.

Q. This was only your second transaction with Jesse? A. Yes.

Q. So he only did business with you on the basis of $300 before? A. Yes, and he counted the $300.

Q. Wasn't $5,000 a lot of money to you? A. Sure.

Q. You were responsible for it, you knew that, didn't you? A. Yes.

Q. And yet you gave the money to Jesse to count? A. I gave the money to Jesse when I picked him up at 140th Street.

Q. Did you ever see the package you were to get for the $5,000 before you gave him the money? A. (No response.)

Q. Did you ever see this package you were supposed to

—911—

get for $5,000? A. No.

Q. And you parted with $5,000 without ever seeing the package you were to get for $5,000 which was not your money? A. Yes.

Q. Now you say the stuff was divided, right? A. Yes.

Q. It was split up? A. Yes.

Q. How many spoons did Jesse count out? A. Jesse didn't count it out. Icky counted it out.

Q. How many spoons did he count out? A. I don't remember.

Q. Well, this was the package you were going to bring back to Leon, isn't that so? A. Yes.

Q. You had the money for this package? A. Yes.

Mr. Starkey: Your Honor, I object to the repetitious question.

The Court: Sustained.

Mr. Pogoda: I am sorry.

The Court: All right, sir.

—912—

Q. Now how many spoons were you to get for $5,000? A. I don't know.

Q. Well, now, how many spoons did you get for $2,500? A. I don't know.

Q. You were there when Icky was measuring this out, weren't you? A. Yes.

Q. Didn't you count to see that you were getting an honest count? A. No.

Q. You knew you had short-changed Leon on the first time? A. I didn't know it.

Q. Didn't Leon tell you it was short? A. Yes.

Q. You didn't want to short-change this customer a second time? A. I didn't have anything to do with the short-changing. I wasn't measuring.

Q. Well, the point is if you didn't give Leon an honest count you would lose him as a customer and this was your only customer, wasn't it? A. Yes.

—913—

Q. At that time did you know how much commission you were going to get? A. No.

Q. You came to Jesse with a $5,000 transaction, and at that time you did not know how much your cut was going to be? A. No.

Q. Were you interested? A. Sure. I thought he would give me a responsible amount for transacting this deal.

Q. You were not going to get into this business with a $5,000 transaction for just small change, were you? A. I didn't understand the question.

Q. Well, you were not in this business just for pennies, were you, with a $5,000 transaction? A. Well, I was realizing for Jesse honesty to give me a reasonable amount of what he thinks right for me transacting this deal for him.

Q. Did you ever know how much Jesse was making on that $5,000 transaction? A. No.

Q. Didn't you think if you knew what he paid for it that you would then determine whether it was a worthwhile risk for you to take?

—914—

Mr. Starkey: Objection as to form.

The Court: I think you are arguing with the witness now. He says he didn't know. He trusted Jesse's honesty to give him what it was worth. I don't know what else you can make of it.

Q. Well now, you brought back the coke, you say, to Leon, and that was at 136th Street? A. Yes.

Q. Now, do you remember being asked this question and making this answer when you were questioned by Mr. Starkey on April 25, 1961, page 2, about the middle of the page.

"Q. Where did you deliver to Leon? A. In front of the Woodside Hotel between 141st and 142nd Street.

Q. On Seventh Avenue? A. On Seventh Avenue."

Now, were you asked those questions and did you make those answers? A. That was a mistake.

Q. A misstatement? A. Yes. That was a mistake, and I correct my—I tried to straighten it out.

Q. You know as a matter of fact?

—915—

Mr. Starkey: I object to his interrupting the witness.

A. I thought this was about the first time that I did business with Tillie, but that was a mistake. It was around the corner.

Q. All right. Now on June 6, 1961, two weeks ago, were you asked did this take place in Mr. Starkey's office in front of this woman stenographer.

"Q. (Mr. Starkey) I show you Exhibit 1 and ask you if you have read this transcription of the questions and

answers that I asked you and you gave on April 25th? A. Yes.

"Q. Is that a true and accurate transcription of the questions and answers on that date? A. Yes."

Now, did you tell him on June 6th, were those questions asked you and did you make those answers? A. I don't remember.

Q. Now you say that this did or did not occur? A. I don't remember.

Q. But if it is presented by Mr. Starkey and represented by Mr. Starkey as having occurred, would you say that it happened? A. I don't remember.

—916—

The Court: Wait just a minute, please. I think Mr. Starkey will concede that that transcript is accurate.

Mr. Starkey: The question is is that a true and accurate transcription of the questions and answers on that date, that is to say April 25, 1961, and that the witness answered yes, I will concede that.

Q. You know you never made any deliveries to Leon on Seventh Avenue in front of the Woodside Hotel? A. I told you that that was an honest mistake.

Q. You didn't make deliveries to anyone on Seventh Avenue in front of the Woodside Hotel? A. That is where me and Tillie got out of the car at and went into the hotel and he said he had to go around this house and wait for Leon to come up.

Q. Now, did there come a time again when you negotiated another deal for Jesse Colson? A. (No response.)

Q. Was there a third transaction that you negotiated for Jesse Colson? A. Yes.

Q. When was that? A. That was with Duke.

—917—

Q. That was what? A. That was with Duke—

Q. I am asking you about Jesse Colson. A. Would you mind repeating your answer, please?

Q. You testified to two transactions with Jesse Colson. I am asking you for a third transaction with Jesse Colson. When did that take place? A. I don't understand the question.

The Court: He wants to know, you had a $300 transaction, and then you had the $5,000 transaction cut down to $2,500.

The Witness: That's right, sir.

The Court: Did you have another transaction, and if so, in what amount, and with whom, for Jesse Colson.

The Witness: That was me and Jesse. That was when I directly delivered the stuff—

Q. No, when did you negotiate, or if you did negotiate.

The Court: Wait just a minute. He is trying to get clear in his mind what you are talking about.

When was this next transaction?

Q. With Jesse Colson and Leon. A. It was—

The Court: Do you remember what the transaction

—918—

was about?

The Witness: Yes.

The Court: How much was involved?

The Witness: It was a kilo.
The Court: When was that?
The Witness: This was the last of September.
The Court: Of what year?
The Witness: '58.
The Court: All right, take the witness.

Q. So that between January of 1958 and September of 1958 you had no transactions with Leon for Colson, am I right? A. No.

Q. Had you seen Leon between January of '58 and September of '58? A. Yes.

Q. When? A. I don't know when. I saw him in the street.

Q. Did you talk to him about making any more purchases for you? A. Talk to him?

Q. About selling him some more stuff. A. Maybe. I don't remember exactly.

Q. He was a good customer, wasn't he?

—919—

Q. And did you try to promote any business with him? A. Yes. I don't remember. I don't remember.

Q. You mean for eight months you did not look to push business with Leon? A. Well, I heard that the stuff he was expecting got caught.

Q. Who did you hear that from? A. I heard that from him.

Q. From who? A. Jesse Colson.

Q. When did you hear that from him? A. He told me a little after the load of coke got caught on the ship, was found on the ship.

Q. When was this? A. I think it was in May, around in there, around in that time.

Q. So that between January and September Colson was without any business?

Mr. Starkey: I will object.

A. I don't know.

The Court: He said he doesn't know.

Q. Did you see Colson often during that period? A. Yes.

—920—

Q. And the people uptown talked about Colson as the man that is in the narcotics business? A. Well, I have heard that, yes.

Q. Didn't you continue to hear it between January and September? A. Well, we was around together pretty close then.

Q. That's right. He had a reputation of being a businessman, a narcotics man, am I right? A. Well, what the people that he did business with—

Q. Well, did you tell us before Mr. Ellis, that on the street there everybody knew Jesse to be the narcotics man and you were traveling around with him? A. I don't think everybody knowed him because if everybody knowed it he wouldn't have had the coke.

Q. Quite a number of people knew him? A. Maybe so.

Q. And pointed him out to you as the coke man? A. Not point him out. I heard it.

Q. You heard that, am I right? A. Yes.

Q. And between January and September of 1958 he had no coke to sell?

Leon Ellis—for Government—Cross

Mr. Starkey: Objection. Argumentative and calls
—921—
for a conclusion.

The Court: I will sustain the objection. He has already answered it.

Q. Do you know of any sales made by Colson between January and September of 1958? A. I don't know.

Q. Well now, tell us how you came to know about this September transaction. A. I came to know it because Jesse told me he was expecting a shipment in.

Q. When did he tell you that? A. I don't know. It was around June or July. He made a telephone call from my godmother's telephone and he said he was calling the people in Chile and he was expecting to get a shipment in pretty soon.

Q. Before this time did you know where Jesse was getting his stuff from, what country? A. No.

Q. So that from September or October or in the fall of 1957 until the fall of 1958 you did not know that the source of supply was Chile? A. No.

Q. You had been with him often during that period,
—922—
right? A. Yes. I didn't even know who was bringing it in.

Q. How long after this telephone call was made to Chile did the stuff arrive? A. I don't know. He made the call some time in the last of May or June, the stuff arrived the last part of September.

Q. So that from the time of the call and the time of delivery was approximately four months? A. (No response.)

Q. Right? A. I don't know exactly.

Q. Was Jesse around during this period? A. I don't know whether he made a couple of trips or not. I don't know.

Q. You mean you don't remember if you saw Jesse during that period of four months? A. Well, I seen him but I don't know whether he made a short trip in between that time because he was going on the ship and he was doing coastwise duty right around the ports around New York.

Q. You didn't see him very often during that period, did you? A. I saw him. He was in and out.

Q. Now at this time that he was shipping in and out

—923—

did you have the stash on Park Avenue? A. No.

Q. Well, where was it stashed? A. I didn't have any. I didn't know where it was stashed.

Q. When for the first time did you find out about a stash? A. It was when he stashed it there.

Q. When? A. I don't know. The last—around in October.

Q. Was that after the second kilo shipment or the first kilo shipment? A. After the second.

Q. You were present when the first kilo shipment came in, am I right? A. Yes.

Q. Did you know it was coming in that day? A. Yes.

Q. And that was in September? A. Yes.

Q. And Jesse told you about it? A. He called me up. He had told me previously that he was expecting a shipment in and he wasn't going to call me no more until the day the shipment was supposed to arrive, and when he called

—924—

downtown, in other words, when I got the message, if I get the message, come to the phone and just say "Hello, how do you feel," hang up, and come on up his house.

Leon Ellis—for Government—Cross

Q. Where were you to get the telephone call? A. In Carter's Corner.

Q. Was this the same time you were supposed to be working in the cleaning store? A. Well, I was in and out of there. I would go to the cleaners during the day. In other words, I am just doing anything that I want to do around the cleaners. In other words, I worked just like I wanted to work and when I was around there, I didn't consider this as a job.

Q. The cleaning store was a front for your other business? A. No.

Q. It wasn't a regular job though, was it? A. No.

Q. And you got the message and you came up to Jesse's apartment? A. Yes.

Q. And while you were there what happened? A. Well, while I was there Jesse was looking out the window, looking could he see the people and he went out in the yard,

—925—

and he saw the old lady out in the yard, and he told her to come in.

Q. How many women came in? A. Two.

Q. Then tell us everything that happened from the time the women came in until the time you went out. A. Well, I can't tell you everything—

Q. Everything that you remember. A. But I will tell you as close as I can.

Well, when Jesse opened the door for them, they were speaking in Spanish, and they came into the living room, sat down, and the elderly lady she opened a large bag and started giving Jesse these packages of cocaine.

Q. How many packages did he get? A. I don't remember. And he was giving them to me. I was taking them into the room, unsealing them and putting them in jars.

Q. Up until this time you had never made a test on cocaine, am I right? A. Repeat that, please.

Q. Until this very day you had never made a test on cocaine, did you? A. Until this very day?

—926—

Q. Yes. A. Yes, I have made a test on cocaine.

Q. Well now, you told us, if I may review, that the first package you received from Jesse was wrapped. A. (No response.)

Q. The second time it was divided by Icky—

Mr. Starkey: I will object to this procedure, your Honor.

The Court: Well, I think that there is confusion anyway between what your question was and what the answer was.

Let me ask you this: You described in your testimony that you made a freeze test by putting some on your gums.

The Witness: That's right.

The Court: When is the first time that you can remember that you made a freeze test by putting it on your gums, about when?

The Witness: This was the last shipment.

The Court: That was the last shipment.

The Witness: About the first of October.

The Court: All right. Take the witness.

Q. So on this particular occasion, the first kilo, you had never made any tests with cocaine, am I right? A. Yes.

—927—

Q. You never tasted it, you never used it? A. I have tasted it, yes, sir.

Q. When did you taste it? A. Just—

Q. When? A. In the apartment. I was taking it out of the bags, the cellophane bags, putting it in the car, and it was all on my hands, and the fumes would almost make you sick from just the fumes alone, and I was tasting it and it was bitter.

Q. You were tasting it as you were emptying the bags? A. I wasn't tasting as I was emptying the bags. I have tasted cocaine and I did taste cocaine there at that time.

Q. Is that the first time you tasted cocaine? A. I don't know exactly.

Q. You don't know if you tasted cocaine before this day? A. No, I don't.

Q. You didn't know what cocaine tasted like, did you? A. At what time?

Q. This time that you are telling us when the kilo came in. A. No, not before I didn't.

Q. Well, now, who told you it was cocaine? A. Jesse.

Q. Was that while you were tasting it? A. No.

Q. Did he taste it? A. He was sniffing it, freezing it, smoking it. He said, "This is good cocaine." You talk about it while he was doing it.

Q. Tell us what else happened that day? A. What else happened that day?

Q. Yes. A. So Jesse gave me a sample and he told me to take it to Leon.

Q. Now, did you leave the house before the women left the house? A. I left the house before the women left the house.

Q. Did you see any money pass between Leon and the women? A. No.

The Court: I think you are confusing the question.

Q. Jesse. I am sorry. Between Jesse and the women.

—929—

A. No.

Q. Did you know how much money Jesse needed to pay the women? A. No.

Q. Did you ever discuss with Jesse how much this shipment cost? A. No.

Q. Did Jesse ever discuss his finances with you at this time? A. No.

Q. Did later find out from Jesse how much he paid the women? A. No.

Q. Did you later find out from Jesse where he got the money to pay the women? A. (No response.)

Q. For this shipment. A. Yes.

Q. Where? A. In other words, the first kilo to Leon.

Q. You mean you first took the sample, went to Leon, negotiated the deal, arranged for the delivery of this cocaine, obtained the money from Leon, brought it back to

—930—

Jesse, Jesse then paid the women? A. No.

Q. How did it go? A. How did it go?

Q. Yes. A. I took the sample to Leon, and gave him the sample and told him, Jesse said everything was all right. He said, "See me tomorrow night because I got to get up some money," or something like that. And I told him okay. So I told Jesse what Leon said, and about the next night I went by and asked Leon what is happening. He said he want to see Jesse, and I told Jesse to go by and see Leon, and Colson arranged the deal, how much was being paid.

Q. Now, how many days was that after the women had

brought the stuff in? A. It was four or five days.

Q. Now, do you know where the women were during these four or five days? A. No.

Q. Had you seen them during the four or five days? A. No.

Q. Had you ever discussed with Jesse whether or not he paid the women for the stuff? A. No.

—931—

Q. Well, now, after Jesse Colson arranged the deal, what happened? A. Well, he told me the next night, or the following night, that he was going to make a move, you know, and he came downtown, he got me, so I went up his house—

Q. You mean he came from the Bronx, 225th Street down to 140th Street, picked you up, and brought you back to 225th Street? A. No. He came down in the afternoon. We was riding around. We were going to make the move that night.

Q. You mean you spent all that day together? A. No, not all that day. He came down in the afternoon. We was riding around downtown, and we was in the car and we was going to make the move that night. But about 7:30 or 8 o'clock we went and picked up the coke.

Q. Where did you go? A. We went up to 225th Street, Jesse's house.

Q. Did he have it stashed in his own home? A. Yes.

Q. Now was the stuff measured or weighed in your presence? A. No.

—932—

Q. Was it ever weighed or measured in your presence? A. Yes.

Q. How much did it weigh? How much teaspoonfuls? A. I don't know.

Q. And what was the arrangement? How was it going to be delivered? A. Me and Jesse was going to deliver it.

Q. Both of you? A. Yes.

Q. How big a package was it? A. A package like this.

Q. How was it wrapped? A. In a bag, a brown bag.

Q. And where did you go from 225th Street? A. We went to 136th Street.

Q. Tell us what happened at 136th Street? A. We went to 136th Street, we left the car on Seventh Avenue, walked down 36th Street and as we was just about in front of the club, Leon was parked there, and we went over to the car, me and Jesse, and Jesse told Leon, he said, "Everything is all right." Leon said, "You got the stuff?" he said, "Yes." so he nodded and said, "Give it to Mersh." Mersh

—933—

was standing right in front of the club and I gave him the bag.

Q. Did you know Mersh before? A. I had seen him.

Q. Ever spoken to him before? A. Yes.

Q. About narcotics? A. No.

Q. Did you know that Mersh knew Leon? A. Did I know that he knew Leon?

Q. Yes, did you know that Leon knew Mersh or Mersh knew Leon? A. I thought he did. I seen them talking.

Q. Do you know what Mersh does for a liivng? A. No.

Q. Did you ever know him to work? A. No.

Q. What sort of a car is it that you went over to on this occasion? A. Well, I can't describe the car.

Q. What is the color of the car? A. I don't remember.

Q. What time was this? A. About 8:30 or 9 o'clock, somewhere in that time.

Q. You still had Daylight Saving Time? A. I don't

—934—

remember.

Leon Ellis—for Government—Cross

Mr. Carluccio: Your Honor, if the Court please, may we be advised as to what time the Court will recess. Many of us have wives and families who are preparing supper I imagine at this hour and we would like to know—

The Court: At the end of Mr. Pogoda's cross-examination. Go right ahead.

By Mr. Pogoda:

Q. Now, Mr. Ellis, you saw Leon's car the afternoon that you made the delivery to him in his car at 136th Street? A. What?

Q. The afternoon you made the first delivery with Tillie, wasn't Mr. Leon in his own car? A. I don't remember.

Q. Well, did you make a delivery to Leon in the automobile? A. I think he was in his automobile. I think he was.

Q. You are not sure now whether the first delivery was in an automobile? A. Well, I remember that it was on 36th Street but I don't remember direct whether he was in the car or on the street.

—935—

Q. Well now, this second delivery, was that in the automobile or was that in the car, in the street? A. Well, I had the jar, and I handed it to Mersh. It was in the street.

Q. And the second delivery was the time you delivered half the package and you returned the $2,500, isn't that so? A. (No response.)

Q. That first sale was for $300, right? A. Yes.

Q. The second sale was supposed to be for $5,000? A. Yes.

Q. And it was only $2,500? A. Yes.

Q. Now did you give the $2,500 and the package while he was in the street or while he was in the automobile? A. While he was in the automobile.

Q. So now you saw the automobile on that occasion, isn't that so? A. Yes.

Q. Now you saw this automobile on the third occasion, right? A. I don't remember.

—936—

Q. Well, now, did you tell the Court you saw Leon at 136th Street often? A. Yes.

Q. In his car, on the street? A. Yes.

Q. Am I right? A. I don't go around looking to see the color of the cars, you know.

Q. You mean you saw this car so many times and you can't tell us the color of this automobile? A. No, I can't.

Q. The make of the automobile? A. No.

Q. Did you ever sit in this automobile? A. Yes.

Q. What is the color of the upholstery? A. I don't know.

Q. None of the things about the automobile ever struck your eye? A. When you have got cocaine you don't think about no automobile.

Q. Well, you want to make sure that you get in the right automobile, don't you? A. The person—that is one you are interested in.

—937—

Q. Well, you would look to see if it was a government automobile or a police car, wouldn't you?

Mr. Starkey: I submit that counsel is arguing with the witness at this point.

The Court: I sustain the objection. Let's get along with the cross-examination, please.

Q. Well, now, you delivered the package to Mersh, right? A. Yes.

Q. Where was he with relation to the automobile? A. Where was he?

Q. Yes. A. He was, I would say, about this distance to there in front of the club, from the sidewalk to the front is a little step up and as you go down to the club he was there.

Q. How far from the automobile? A. I would say about a couple of feet. I wouldn't say a couple of feet. I would say about from this distance to this jury here (indicating).

Q. And how many men were standing there? A. I don't know.

Q. More than one? A. I don't remember.

—938—

Q. How do you know when Leon said, "Give it to Mersh," that you were giving it to the right person? A. He pointed to him. I remember him calling him Mersh around throughout the block and I knew who he meant by Mersh.

Q. You didn't live on 136th Street, did you? A. No, I didn't.

Q. Does Mersh live on 136th Street? A. I don't know where he lives at.

Q. Now after you delivered it to Mersh what did you do? A. I kept walking.

Q. Where did you walk to? A. Carter's Corner.

Q. Did you see Jesse later? A. Did I see him later?

Q. Yes. A. Yes.

Q. At his home? A. No.

Q. Where then? A. He picked me up at the bar and we went up to his house.

Q. Well, now, at this time, when you arrived at the

—939—

house, did you count out the money? A. Yes.

Leon Ellis—for Government—Cross

Q. How much was it? A. I don't know exactly. I thought it was $14,000 and Jesse said later that it was 12,000. I don't know exactly how much it was.

Q. Well, there is a big difference in what was due you whether it was 12,000 or 14,000, right? A. Well, yes. The way his little black book was it wouldn't make any difference. It would be back again anyway.

Q. You mean you were relying on Jesse's honesty to give you what was fair? A. Yes.

Q. Now before this sale was negotiated did you ask Jesse how much you would get out of it? A. No. He told me.

Q. He told you what? A. He told me that he was going to give me 10 per cent.

Q. This was when? A. When I saw the first big shipment, when it first came in.

Q. Then between January and September you didn't

know at all what percentage you were going to get on any future sales? A. No.

Q. Now, do you know whether the sale to Leon that you have told us about was the whole package brought in by the two women? A. Whether I knew or not?

Q. Yes. A. No, I didn't know.

Q. Did you weigh or measure it at all? A. No.

Q. Now, when you came back to the house with the $12,000 was the woman there? A. No.

Q. Did you see the women again or either one of the women again until the second delivery was made? A. I didn't see either one of them until the second delivery was made.

Q. Now, between the first and second delivery did you

ever speak to Colson about paying the women for the delivery of the merchandise? A. No.

Q. Do you know whether the merchandise was delivered to Colson on consignment? A. I don't know.

—941—

Q. Now, after the first delivery of the kilo you did have some conversation with Colson about the quality of the stuff, am I right? A. After the first?

Q. Yes. A. No.

Q. There was no question about the quality of the stuff? A. Well, it was good quality. He told me the last time, the last was like garbage, he said.

Q. Now when did Jesse give you the money, your cut? A. When he got finished counting it.

Q. Now did you see Jesse again after that? A. Yes. I was seeing him pretty often.

Q. After he gave you your cut? A. Yes.

Q. Did he still ask you to look for customers? A. He didn't ask me. I know that on my own.

Q. Now did you make any sales to anyone but Leon? A. During that time?

Q. At any time. A. No.

—942—

Q. Did you stop to think whether or not you sold stuff to anyone or don't you know whether you did or not? A. I had to think.

Q. I ask you this, Mr. Ellis: Did Mr. Starkey question you about sales to anyone but to Leon? A. (No response.)

Q. At any time. A. Yes.

Q. What did you tell him? A. I told him no.

Q. Did you tell Mr. Murphy that the only one you sold to was Leon? A. He didn't ask me that.

Q. Did Mr. Murphy ask you any questions? A. Yes.

Q. What did he ask you? A. He asked me a few questions. I don't remember.

Q. You don't remember? A. No.

Q. You are not confused, are you? A. I don't think I am.

Q. Were you ever in Mr. Murphy's custody or presence without the presence of Mr. Starkey? A. Yes.

—943—

Q. How many times? A. I don't remember. A few times.

Q. And all Mr. Murphy ever did was to show you the picture of Leon and some of the other men? A. Well, he showed me a lot of pictures.

Q. Now, did Mr. Murphy or anyone else say to you, "We have got to get this man"? A. No.

Q. Did they ever say anything to you which led you to believe that your testimony as far as any of these defendants is very important? A. No.

Q. You were merely coming in to help the government see justice done?

The Court: Let's get on with this case, please.

Mr. Pogoda: I think the question is proper, if the Court please. I heard no objection.

Mr. Starkey: I will belatedly object to it, your Honor.

The Court: I will sustain the objection. Let's proceed.

Q. Now, when did you find out for a second time, or again that a second delivery was going to be made? A. It was the last of October, around that time.

—944—

Q. Do you know when Jesse was arrested? A. No.

Q. When did you stop seeing Jesse? A. When did I stop seeing him?

Q. Yes. A. I don't think I stopped seeing him.

Q. When did you find out Jesse was arrested? A. He told me the time he got out of the jail. He told me.

Q. When was that? A. I don't know.

Q. You don't know the year? A. I don't remember.

Q. How long after the second shipment? A. I don't remember.

Q. You don't recall whether it's a month or two months after the second shipment? A. I don't remember.

Q. Do you recall why he was arrested? A. I don't remember.

Q. No idea? A. I don't remember.

Q. Do you remember when you saw him after he came

out of prison? A. (No response.)

Q. The month? A. I don't remember, sir.

Q. The year? A. I don't remember.

Q. Well, how long was it before you were arrested? A. I don't remember.

Mr. Starkey: Objection, your Honor. I think that is a matter of record at this point.

The Court: He says he does not remember.

Mr. Pogoda: I don't know that the record shows—

The Court: The witness answered he does not remember.

Mr. Pogoda: May we call upon the government to state for the record when Jesse Colson was arrested.

The Court: When was he arrested?

Mr. Starkey: I believe it was December of '59, your Honor.

The Court: December of '59.

Mr. Starkey: Yes. Agent Murphy has the exact date. July 21st.

The Court: '59.

Mr. Starkey: Yes, sir.

The Court: All right.

—946—

Q. That is quite some time ago, isn't it? A. Yes.

Q. Almost two years. Weren't you worried that you were going to be arrested too?

Mr. Starkey: Objection.

The Court: Counsel, it would be nice to get back to this case.

Mr. Pogoda: I want to know if there has been flight, Judge.

Mr. Starkey: This witness isn't on trial, Judge.

The Court: Let's proceed.

Q. In any event, there came a time when you did not see Jesse? A. I always saw him.

Q. You always did? A. I been seeing him, yes.

Q. You didn't see him when he was in jail, did you? A. I wasn't going to break in there to see him.

Q. You don't know how long he was in jail, do you? A. No.

Q. Now coming back to the second shipment, tell us how that transaction was worked out. A. Well, he told me to do the same thing I did the first time. When he called downtown, when I get the message, when I come

—947—

to the phone, to come up his house.

Leon Ellis—for Government—Cross

Q. And you were there, I take it, when the man and woman made the delivery, right? A. Yes.

Q. Now, before the first delivery Leon did not want to negotiate with you, he wanted to negotiate with Jesse, right? A. (No response.)

Q. It was Jesse who made the price with Leon for the stuff, isn't that so? A. Yes.

Q. And now, when the second delivery came in, is it your testimony now that Jesse again sent you down to see Leon? A. With a sample.

Q. With a sample? A. Yes.

Q. How much was in the sample? A. I don't know.

Q. A teaspoonful? A. (No response.)

Q. You carried it, isn't that so? A. Yes.

Q. What did you carry it in? A. In a piece of alu-

minized paper.

Q. Tin foil? A. Yes.

Q. What did you do? Give it to Leon? A. Yes.

Q. What would he do with it? A. I don't know.

Q. You never saw him do anything with it? A. No.

Q. And after you gave it to him what conversation did you have with Leon? A. I would tell him everything is okay.

Q. What did he say? A. He would say, "Yes, okay." He said, "See you tomorrow night," or something like that.

Q. Did you see him the following night? A. I don't remember.

Q. Do you know the next time you saw him? A. It was the following night, the next night or one of those nights in between there.

Q. You were also on 136th Street? A. Yes.

Q. In an automobile or on the street? A. I don't remember.

—949—

Q. Well, either would be in the automobile or on the street, isn't that so? A. I don't remember.

Q. You don't remember if you saw him on the street or in an automobile? A. At that particular time, no.

Q. Did you ever see him anywhere but on the street of 136th Street or in his automobile? A. Well, I used to see him in the restaurant, and I used to see him in the club.

Q. What street? A. 136th Street.

Q. The restaurant on 136th Street? A. Yes.

Q. Near where? A. Near Lenox Avenue.

Q. Would it be on the uptown or the downtown side? A. I don't know but the number is 102.

Q. That would be right on the corner of Lenox Avenue, isn't that so? A. I don't know exactly.

Q. Well, now, you have been in this restaurant, haven't you? A. Yes.

—950—

Q. Do you know if it is on the corner of Lenox Avenue or if it is not on the corner? A. No, it's not on the corner. It's right behind a whiskey store. The restaurant is on 136th Street.

Q. Isn't that the corner building of 136th Street, and the numbers on Lenox Avenue and on every block start on 102? A. I don't remember.

Q. How many years have you lived up in Harlem? A. I would say about 12 or 13. A couple of years in Brooklyn.

Q. Always in the vicinity of the area you described to us? A. Always? What area?

Q. 136th Street, 138th, 140th Street, Seventh Avenue,

Lenox Avenue. A. No. I used to get around a little bit up there.

Q. On the East Side too? A. No.

Q. Do you know where Mount Morris Park is? A. Yes.

Q. Where is it? A. It's around 123rd, 122nd Street, right behind the hospital there. I don't know. There is a

—951—

large church there.

Q. Right across the street from the Joint Disease Hospital, am I right? A. I don't know exactly.

Q. It starts at Madison Avenue, isn't that so? A. I don't know.

The Court: Can't we get back to this case soon?
Mr. Pogoda: Yes.

Q. Yesterday when you described the hotel in which Icky was you said Mount Morris Park. That is a different part of town, isn't it? A. I said a park. Maybe I did say—I don't think I said Mount Morris Park but I said a park.

Q. Now, after you saw Leon at 136th Street and you gave him a sample, saw him the following night or the night after that, isn't that so? A. Yes.

Q. Did you have any discussions with him the next time you saw him? A. Yes.

Q. What was that discussion? A. Well, it was about the same thing, cocaine.

Q. Well, what did you say to him and what did he say

—952—

to you? A. I asked him, I think I asked him "How are you doing, how is everything?" and he told me "I still

ain't doing nothing. I have to get up some money" or something like that.

Q. How long a period was it between the time you saw him and the time you next saw him? A. I don't understand your question.

Q. Well, did you see him after the second talk? A. I don't understand the question.

Q. After you came with the sample you told him you had a delivery, a kilo, right? A. No.

Q. You gave him a sample after the second delivery, isn't that true? A. Yes.

Q. And then you came back to find out if he wanted to buy the stuff, isn't that so? A. Yes.

Q. And you came back a couple of days later or a day later? A. (No response.)

Q. Right? A. After I took the sample, yes, a couple

of days later, yes.

Q. What happened on that occasion? A. Well, he told me he had to get up some money, and to tell Jesse that he wanted to see him or tell him to come by a day or so after.

Q. Now, did you go back with Jesse a day or two later? A. Go back with Jesse where?

Q. To see Leon. A. No.

Q. Well, now, when did you speak to Leon or Jesse about this deal, the second kilo deal? A. I didn't speak to anyone. Jesse spoke to me about it.

Q. What did Jesse say to you? A. Well, we would be riding and he would tell me when he was going to make this delivery, you know.

Q. Did he tell you how much he was going to get for this delivery? A. No.

Q. You were to get a cut of 10 per cent on this, am I right? A. Yes.

Q. You never asked Jesse whether he was selling him

—954—

$2,000 worth or $10,000? A. No, I didn't ask him.

Q. Well, didn't you discuss these matters very freely and openly with Jesse? A. No.

Q. What would you have, a code between you two as to how to discuss the matter? A. No.

Q. You had a conversation with him, he would speak to you and you would speak to him, right? A. Yes.

Q. You traveled in a car together? A. Yes.

Q. And you discussed this transaction, the second transaction with Leon? A. Me and Jesse?

Q. Yes. A. No.

Q. Tell us how you knew there was to be a delivery, a sale to Leon? A. Jesse told me.

Q. How long after the man and woman bought the stuff? A. Oh, I think five or six days, something like that.

—955—

Q. And then did you bring the stuff down to 136th Street? A. No, we didn't bring it down. We didn't bring it down 136th Street. We brought it from Park Avenue, me and Jesse.

Q. Did you know the stuff had been transferred from Jesse's house to Park Avenue? A. Yes.

Q. When did you find out it was brought to Park Avenue? A. About a couple of hours after it was in.

Q. Who told you it was brought there? A. What?

Q. Who told you it was brought there? A. I met the girl there.

Q. Where? A. I don't know the number right now but I think it is—I am not sure. My memory—1818 or 1918.

Leon Ellis—for Government—Cross

Q. What is the name of this girl? A. What is her name?

Q. Yes. A. Bedalia.

Q. What? A. Bedalia.

—956—

Q. How many times have you seen her? A. Oh, she passed.

Q. She's what? A. She has passed now.

Q. She is now dead? A. Yes.

Q. How many times did you see her before the night you went down to get the stuff? A. I used to see her quite frequently.

Q. Was that a usual stash for Jesse? A. No.

Q. Was this his girl friend?

Was she a friend of yours? A. No.

Q. Did you ever ask Jesse why he brought the stuff down there? A. No.

Q. Until this first time, or this second delivery he always kept the stuff in his house, didn't he? A. Well, I didn't know exactly where he was keeping it.

Q. Well, now, this first delivery, this first kilo was brought from his house, wasn't it? A. Yes.

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Q. Now, did you ever see the stuff from the first time it was brought into his house until the night that the delivery was going to be made? A. Did I ever see it?

Q. Yes. A. No.

Q. You don't know, do you, when the stuff that the people brought into Jesse's house is the same stuff that was stashed away in Park Avenue, do you? A. Do I know?

Q. Yes. A. No, I don't know.

Q. You don't know what was in that stuff that you

picked up that night at Park Avenue? A. I don't know what was in it?

Q. Yes. Did you tape that night? A. No, Jesse was taking it out of one jar and putting it in another.

Q. Did he measure it out and count it out? A. No. He had already counted part of it out. He counted the rest of it out in my presence.

Q. Then, after Jesse had finished counting it out, he wrapped it up? A. He take the jar up and put it in the bag.

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Q. And brought it uptown, right? A. Me and him.

Q. Can you tell us why they tape a jar of cocaine? A. Keep it from evaporating.

Q. And so now, in order to prevent shrinkage of the cocaine, you put this in a solid jar and tape it so that no air can get into it? A. You tape it and put a top on it and tape it around the edges.

Q. To prevent it from evaporating, isn't that so? A. Yes.

Q. How long would the stuff last if it were not done that way? A. I don't know.

Q. You then brought the stuff to where? A. Me and Jesse.

Q. Where did you bring it to? A. To 136th Street. We parked the car.

Q. Where? A. 136th Street.

Q. In the street? A. Yes. On Lenox Avenue. Then I got out of the car, both of us. Then he told me to stay over by the hospital until he go in the block and could he see Leon.

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Q. Where was the stuff? A. I had it in my hand.

Q. Standing in front of the hospital? A. I was walking back and forth with it.

Q. Was it wrapped in a brown paper bag? A. It was in a bag, yes. It was in a bag, yes.

Q. And how long was Jesse in the block before something happened? A. Where?

Q. 136th Street. A. Before something happened what?

Q. That he came back. A. He came back—

Q. How long did you walk in front of the hospital with this bag of cocaine? A. About five, ten minutes.

Q. Then what happened? A. Then Jesse told me that he was going to the block—

Mr. Somers: I can't hear you.

A. (Continuing) —Jesse told me he was going in the block to see could he find Leon and when he find Leon he going to wait for me like this to come across the street. And he did.

Q. And you went across the street? A. Yes.

Q. Did you go together with Leon and Jesse back down 136th Street? A. No, I didn't.

Q. Where did you go? A. Where did who go?

Q. You. A. I came over with the jar. Leon was coming down the street and Jesse told me to give him the jar. I gave him the jar and he gave it to Leon.

Q. Then where did you go? A. Where did I go?

Q. Yes. A. We went and got in Jesse's car and went downtown to—

Q. Where? A. I don't know. It is around 122nd Street, down near the park down there, Manhattan Avenue. I don't know which avenue it is.

Q. What did you do when you got there? A. What did I do?

Q. Yes. A. Just sat in the car. Leon got out and said he

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would be back in about 15 or 20 minutes.

Q. When he got out of the car, did he take the stuff with him? A. I don't remember.

Q. There was $12,000 worth of merchandise, is that right? A. (No response.)

Q. Am I right? A. It could be more than that. I don't know.

Q. That's what he eventually got for it, isn't that so? A. I thought it was fourteen. Jesse said it was twelve. I don't know directly.

Q. Well, now, is it your testimony that Leon walked away with $12,000 worth of merchandise and you don't remember whether he did or did not? A. Did or did not what?

Mr. Starkey: May I have that question read, please, your Honor.

The Court: The witness has answered the question. He says he does not know whether or not Leon took the stuff with him.

Mr. Starkey: All right, your Honor. I withdraw my request.

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Mr. Carluccio: Your Honor, with the utmost respect for your Honor's ruling and at the risk of incurring the ire of the Court, I wish that a moment or a minute be spent to discuss the termination time of this daily trial for many reasons, one of which, which I have noticed right now, is that a new

stenographer has been placed in place of the other stenographer. I don't see how he would know myself or other counsel at this time in taking his testimony. That is one reason and for other reasons which I mentioned, and it is before supper, and also another reason that maybe many of us in the courtroom have to travel some distance, have train schedules to make, and in addition to which there is a gale blowing which is very serious at this point, and I wish we could take a minute to discuss the termination of this—

The Court: We will terminate the hearing after this cross-examination. Let's proceed.

By Mr. Pogoda:

Q. Mr. Ellis, you don't recall now whether Leon took the bag with the stuff out when he went into the house? A. I don't know.

Q. When he came out of the house, what happened?

A. Down 136th Street?

Q. Yes. A. He came back out with two bags. So he gave it to Jesse. Jesse put it on the car seat. Leon got in the car and dropped him off at 136th Street and Seventh Avenue and went up to Jesse's house.

Q. You did not see Jesse give him the package at the time that Leon gave him the money, right? A. He gave him the package in the street there.

Q. That is the last you saw of the package? A. Yes. He gave Leon the package. Leon went in the restaurant and he told Jesse to wait a minute, he would go with him.

Q. There was still $12,000 to be paid, wasn't there? A. Yes.

Q. You were still to get your cut out of that $12,000, isn't that so? A. I don't understand.

Q. You were still to get your cut of $12,000? A. I was looking for to get my cut?

Q. Yes, your cut out of the $12,000. A. Yes, I was looking to get something.

Q. Didn't you want to make sure you were going to

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get paid? A. Yes.

Q. When the second shipment came in with the man and woman, did you see Jesse pay him—pay the man and woman for the second kilo delivery? A. I saw him give them some money. I don't know how much it were.

Q. You mean when they brought in the second delivery, you were present when Jesse paid the man and woman for the shipment? A. Yes, I was present when Jesse gave the man and woman some money, yes.

Q. Was that at the time of the delivery or was that after the sale that was made? A. It was after the sale.

Q. How much money did he give him? A. I don't remember.

Q. That was the time, I take it, that you drove them downtown to 32nd Street and Broadway, isn't that so? A. Well, yes. I went with Jesse. Jesse was driving down there in his car and went down to 32nd or 33rd Street, down in that neighborhood.

Q. Coming back to your return from Chicago and Mississippi, that was in February of 1958, right? A. Yes.

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Q. Until this time you never mentioned the name of Duke. Did you know Duke? A. On this time?

Q. In your testimony that you gave, the first time you mentioned the name Duke was when you returned from

Chicago and Mississippi after attending your mother's funeral. A. I don't think I was asked about that.

Q. Now my question is this: When for the first time did you meet Duke? A. I don't know. I met him in '57.

Q. When in '57? A. I don't know. I don't know.

Q. Nothing outstanding about your meeting Duke, was there? A. No.

Q. You had no business dealings with him? A. I met Duke as—Jesse introduced me to him as his brother. I thought they was brothers all the time.

Q. They were very good friends from what you could see, am I right? A. Yes.

Q. Now, had you ever been to Duke's home? A. No.

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Q. Had he ever been to your home? A. No.

Q. Had you ever been out to any dances or parties together? A. No.

Q. How many times would you say you saw Jesse before you went out to attend your mother's funeral? A. I don't remember.

Q. A few times? A. I don't remember.

Q. It could have been one time? A. I don't remember.

Q. You were not very well acquainted with him, were you? A. Well, we was—I won't say—but we was all right.

Q. You mean you had no arguments? A. No.

Q. Did you ever go to ball games together or flights together? A. No.

Q. You never went out together as buddies, did you? A. No.

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Q. Now, when you returned from Chicago and Mississippi after attending your mother's funeral, how did you

get in contact with Duke? A. Jesse told me to go down and ask him why is he angry with him and anything. That's how I got in contact with him.

Q. Jesse told you that he and Duke had a falling out? A. Well, yes, they had an argument about the car.

Q. And you thought you would do Jesse a favor to go down and see Duke? A. Jesse asked me.

Q. Until this time you only had two transactions for Jesse, am I right? The $300 one and the $5,000 transaction, right? A. Yes.

Q. And this was but a short time after you met him that your mother died? A. Yes.

Q. And he asked you to go down and see Duke to try and bring Duke and him together again. But wasn't your purpose there to try and get them to resume their friendship? A. It was my purpose?

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Q. Wasn't that the purpose of your visit to Duke's girl friend's house?

The Court: The question was why did you go to see Duke?

A. I went because Jesse asked me to go.

Q. What did he ask you to do for him, accomplish for him? A. He didn't ask me to accomplish anything.

Q. Jesse knew why Duke was mad at him, am I right? A. I don't know exactly. He said he thought Duke—he thought Duke was mad at him about the car incident.

Q. And you were going to patch up things between two friends? A. No. I was going down—he sent me down there to see what he was mad at him about.

Q. And it was while you were down to Duke's house at this time and having a conversation with him about why

he was mad with Jesse that the matter of narcotics came up? A. Yes.

Q. You didn't go down there for that purpose, did you? A. No.

Q. As far as you knew Duke wasn't involved in any

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such thing; am I right? A. In what such thing?

Q. In narcotics. A. As far as I know?

Q. Yes. A. Well, as far as I know that he wasn't involved?

Q. That's right A. I know he was involved.

Q. Did you ever have any business transactions with him? A. With Duke?

Q. Up until this day? Yes, with Duke. A. No. Jesse was my boss.

Q. All you knew is what Jesse told you; am I right? A. Yes.

Q. And you know Jesse lied, too, isn't that so?

Mr. Starkey: I'll object to that, your Honor.
The Court: I will overrule the objection.

Q. You know Jesse lied. A. I don't know.

Q. You know he did you out of a commission on $2,000 on the first occasion, am I right? A. I don't know.

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Q. Didn't you count 14,000 when it was only twelve? A. No, I didn't.

Q. You thought it was fourteen but it was only twelve, am I right? A. That's what he said.

Q. What did you say it was? A. What? I said I thought it was 14,000.

Q. You can count, can't you? A. Yes.

Q. You had an interest in this money, didn't you? A.

I didn't have the access—to count all the money. I was just putting the denomination of the bills together.

Q. Well, now, it was that time that you say Duke spoke to you about a deal; right? A. At what time?

Q. When you were back from Chicago, when you were down at his girl friend's house. A. No, I didn't say that.

Q. When did he first speak to you about making a deal with him? A. Making what deal?

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Q. Yes. A. I don't know.

Q. You don't know? You don't know when Duke spoke to you to try to sell a package for him? A. No.

Q. Can you give us an approximation of the month you spoke to Duke about selling stuff for him? A. I don't know what you are talking about.

Q. Well, did you testify on direct examination that at Duke's request you approached Leon and made a sale for Duke? A. I didn't say that.

Q. Never made a sale for Duke? A. No.

Q. Did you introduce Duke to Leon? A. No, I didn't introduce him, no.

Q. So that as far as you know you never made a sale to Leon for Duke nor did Duke make a sale to Leon himself? A. Me and Duke was together, and we went down to 136th Street and waited for Leon to come around, and we got in Leon's car, and then Duke gave him the package and he received some money. I don't know what the contents was in the package or how much money he got. I know he gave me $75.

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Q. You don't know how much of a package there was delivered? A. How much was the package?

Q. Yes, the cost of the package? A. It was a package.

Q. And this was without a previous appointment or discussion by you with Leon? A. Yes.

Q. In other words, you and Duke together went over to 136th Street, you looked for Leon, Duke went over to Leon, made a deal with him, gave him a package, got money and after that he gave you $75. A. Duke, he told me that he had—

Q. I am asking you, did he give you $75 after that?

Mr. Starkey: Wait, your Honor.

The Court: That is a long question just for that $75. Do you want to rephrase the question?

Mr. Pagoda: All right. I will break it down.

Q. First tell us where Leon or Duke got in touch with you that day. A. 140th Street.

Q. Did you ever see—did Duke ever see you on 140th Street before? A. Yes.

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Mr. Starkey: Objection.

The Court: I think he answered the question.

Did you answer that?

The Witness: Yes.

The Court: He said yes.

Q. Do you know what time of the day or night it was? A. I don't remember.

Q. Did Duke have the package with him on that occasion? A. Yes.

Q. What did Duke say to you when he met you on 140th Street? A. He said—he called my name. He said "Hi, Schoolboy. How you feel?" something like that. He said "I got a package for your man." He said "Do you want to

walk around 36th Street with me?" I said "Yes." and we went around 136th Street and seen Leon, so Duke saw a friend of his, a girl live up over the club, and we went up there and stayed about an hour, hour and a half.

Q. Was it a friend of—a girl friend of Leon or a girl friend of Duke that you saw? A. A friend of Duke's.

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Q. Not Leon's? A. It was a friend of Duke's.

Q. And when did you see Leon? A. About an hour and a half after we was up there, approximately. I came back downstairs.

Q. And how did you approach Leon? Did you approach Leon yourself or did you approach him with Duke? A. I approached him myself.

Q. What did you say to Leon? A. I told him "A man is upstairs here. I got a package for you." Leon say "Where it is?" I say "Right upstairs over the club." and he told me to go get him. I went and got him and I came downstairs, and we got in the car and Duke gave Leon the package.

Q. You were in the car— A. Yes.

Q. —when Duke gave Leon the package? A. Yes.

Q. Was there any conversation between Duke and Leon? A. There was a conversation, but I don't remember much of it.

Q. You don't remember any part of the conversation? A. No.

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Q. When did Duke give Leon the package? A. When he give it to him? It was in the car.

Q. Was the car parked somewhere or was it moving? A. No, the car was in motion. It was moving.

Q. Leon was driving the car? A. Yes.

Q. Do you recall the color of that car? A. No, I don't.

Q. This was broad daylight? A. No. It was just about evening, say about—I don't know, I think it was around about between 6 and 7 o'clock, in the region of that time, I think. I am not sure about the time.

Q. Have you any idea of the month? A. I'm not quite sure, but I think it was in March. I am not quite sure.

Q. Was this the same automobile that you always saw Leon in? A. I don't remember.

Q. Did you see Leon pass Duke any money? A. Yes.

Q. How much money? A. I don't know.

Q. Well, when he passed—when Leon passed Duke the

money, did he say "Here is so much money"? A. I don't remember.

Q. You don't remember any conversation between Duke and Leon at all as to how much was in the package and how much Duke wanted for the package? A. No, I don't remember.

Q. When did Duke give you the $75? A. When I went down to his girl friend's mother's house. I went down there with him.

Q. Was that right after the money had been paid by Leon to Duke? A. Yes.

Q. The same day? A. Yes.

Q. Did you see Duke again after that? A. Did I see Duke again after that?

Q. Yes. A. Yes, I saw him a lot of times after that.

Q. Well, how soon after this? A. I don't remember.

Q. Did you know what Duke was doing for a living? A. No.

Q. You knew Duke was a seaman, didn't you? A. Yes.

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Q. You knew he took trips? A. Yes.

Q. Did Mr. Starkey or Mr. Murphy ever tell you when the defendant Duke was on a voyage? A. No.

Q. Did you ever discuss with anyone connected with the government when Duke or any other seaman defendants in this case were on voyages? A. No.

Q. Did Mr. Starkey or Mr. Murphy ever suggest to you that March would be a good month because in April of 1958 Duke was on the high seas?

Mr. Starkey: I will object and I will ask the Court to remind counsel that he must have a basis for asking questions of that kind.

Mr. Pagoda: I am mentioning a name directly. I am asking whether it was suggested to him by that person.

Mr. Starkey: Precisely, your Honor. It is that to which I am objecting.

The Court: The jury will disregard the implication of counsel's questions because counsel is not testifying. But I will overrule the objection just to expedite the matter.

Can you answer the question?

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Did anybody tell you anything like that?

A. No.

The Court: All right.

Leon Ellis—for Government—Cross

By Mr. Pagoda:

Q. Did you ever find out from anyone connected with the government how you were arrested—how come you were arrested? A. Yes.

Q. Who told you how come you were arrested? A. Agent Murphy said I am being arrested for violating the Narcotics Act.

Q. Did he tell you who squealed on you?

Mr. Starkey: Objection.

A. No.

The Court: He said no. Let's proceed.

Mr. Starkey: I would—

The Court: The witness said no, he didn't.

Mr. Starkey: I would just like to request the witness through the Court not to answer after I object unless the Court has ruled.

The Court: Don't answer after you see Mr. Starkey getting up. Let's proceed.

Q. Have you any idea who pointed a finger at you?

Mr. Starkey: Objection.

The Court: That is overruled.

Q. No? A. No.

Q. Now, Mr. Ellis, I don't recall now, but when you were brought into Mr. Starkey's office was it Mr. Starkey or Mr. Murphy or—I will withdraw the question.

Who told you that you would receive consideration if you testified in this case?

Mr. Starkey: I will object, your Honor. I am not sure that that is—

The Court: I will sustain that objection. No one said that to him. He hasn't testified to this.

Mr. Pagoda: He has so testified, if the Court pleases, if my memory serves me correctly.

Q. Did anyone promise you consideration if you testified in this case? A. No, not—

The Court: I think he testified, to expedite the matter, he said that if he testified the matter would be called to the Court's attention. I think that's about what he said.

Q. What did you take that to mean? A. I didn't know what he mean.

Q. Well, you knew if you didn't testify and they pressed

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a charge against you you might face a long term in prison. Did you not know that?

Mr. Starkey: Your Honor, I will object to the form of that question.

The Court: That's—

Mr. Starkey: It implies a causal relationship.

The Court: That is overruled.

You knew that violating a narcotics law could involve a long term in prison. You knew that, didn't you?

The Witness: Yes.

The Court: And that had something to do with your testifying, didn't it?

The Witness: Oh, yes.
The Court: All right.

By Mr. Pagoda:

Q. Weren't you looking to buy your way out of prison, if you could?

Mr. Starkey: I will object to the form of that question.
The Court: I will sustain the objection.

Q. Weren't you looking to make a deal so that, if you testified, you may not go to prison for a long term?

Mr. Starkey: Objection to the form again, your

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Honor.
The Court: I overrule the objection.
Weren't you trying to help yourself by testifying so if possible you wouldn't go to jail?
The Witness: Yes.
The Court: All right.

By Mr. Pagoda:

Q. And did Agent Murphy or anyone else in connection with the government tell you that if you did not testify that you would go to jail for a long time? A. No.
Q. Since your arrest have you received any money from the government? A. I am under protective custody.
Q. Where are you staying? A. Where I am staying?
Q. Yes.

The Court: Wait just a minute. You don't have to answer that.

Q. Are you living in a hotel here in New York?

The Court: You don't have to answer those questions.

He is in protective custody. He does not have to disclose where he is, sir.

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Q. Are you being held as a material witness in this case?

Mr. Starkey: I will object to that question, your Honor.

The Court: I am not sure the witness understands what a material witness is or whether or not he is being held.

Are you being held in jail or any place like that?

The Witness: No.

The Court: He is not being held in jail.

Q. You were paroled or released in your own recognizance when you appeared before a commissioner on April 25, 1958, am I right? A. Yes,

Q. You were not held on bail?

The Court: No, he testified to that. He has no bail.

Q. At that time was there an application by Mr. Starkey or anyone else connected with the government that you come under their protective custody? A. No.

Q. When did you come under their protective custody?

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A. I don't know exactly what date.

Q. Did you go home on the night of April 25, 1961? A. I don't remember.

Q. Well, did you walk out of the commissioner's courtroom or office without handcuffs? A. Yes.

Q. And were you free to leave the building? A. Yes.

Q. Did you leave the building alone? A. Yes.

Q. Where did you go from there? A. I went home.

Q. So you were not under protective custody? A. Not at that time, no.

Q. When did you come under the government's protective custody? A. I don't know exactly what date. About three weeks ago, some time like that.

Q. Other than the government, that is, any of these special agents, or the U. S. Attorney's office, did anyone else ever speak to you about this case? A. I don't remember.

Q. You don't remember when anyone other than those connected with the government spoke to you about this

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case? A. Any one of those—please repeat that.

Q. Did anyone but Agent Murphy, Mr. Starkey or others connected with the government speak to you about this case? A. No. A couple of them speak to me about this case.

Q. Who? A. I don't know which ones. I don't remember now.

Q. Were they government agents? A. Yes.

Q. Other than government agents, did any—did lawyers you see here speak to you? A. Any who?

Q. Any of the attorneys you see sitting in the courtroom talk to you about the case? A. They was—what do you mean, privately or in court?

Q. Privately. A. No.

Q. So that from the time you were arrested until the time you appeared in the courtroom, no one approached you about your testimony in this case except the government, isn't that true? A. I don't understand the question.

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Q. Now, Mr. Ellis, what I am trying to find out is this: Did anyone talk to you about your testimony in this case except those who are connected with the government? A. Well, yes. They told me to just try to tell the truth to the best—the way—

> The Court: Just a minute. That is not the question. The question is whether or not somebody or some people outside the government talked to you about the case.
>
> The Witness: Yes, sir. I had a lot of people talked to me about the case. My boss, my uncle, a few other people talked to me.

Q. But no one connected with any of these defendants or their attorneys spoke to you about your case? A. No.

Q. Nobody told you what to say on this witness stand; am I right? A. No.

Q. The only one you discussed what you were going to say with is the government? A. I don't know how to answer that.

Q. Well, now, how did it come about that you were

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brought under the protective custody of the government? A. Because I was threatened a couple of times.

Q. By whom? A. By Jesse Colson.

Q. Jesse Colson was the one who threatened you, am I right? A. Yes.

Q. He was the one who put the finger on you?

Mr. Starkey: I will object to that, your Honor.

The Court: I will sustain the objection.

Q. When did Jesse Colson threaten you? A. I don't know what date. It was quite some time ago.

Q. Was that before you saw Jesse Colson in Mr. Starkey's office? A. Yes.

Q. When you saw Jesse Colson in Starkey's office, you were friendly with him, weren't you? A. Yes. We talked.

Q. You weren't worried about him at that time, were you? A. I weren't worried about him no time.

Q. Even after he made the threats? A. No. I wasn't

worried about him. I wouldn't be afraid of him, if that's what you are trying to get.

Q. You know Jesse Colson shot someone, am I right?

Mr. Starkey: Objection.

The Court: Just a minute, please. I sustain the objection. Let's stay with this case, please.

Q. In any event, when you saw Jesse Colson down in Mr. Starkey's office, you were back on friendly terms again, right? A. We weren't back on friendly terms. We was speaking but we wasn't on friendly terms.

Q. You were discussing your story in court and he was telling you what he was going to say, right? A. No.

Q. You never discussed your testimony? A. No.

Leon Ellis—for Government—Cross

Q. Weren't you, Jesse, Mr. Starkey and Mr. Murphy in the same room going over your testimony? A. Going over my testimony?

Q. Yes. And going over his testimony as well? A. No, I don't think—Jesse weren't there. Jesse wasn't there.

Q. Did you or did you not tell us on cross-examination earlier this afternoon that you and Jesse were both to-

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gether in Mr. Starkey's office with Mr. Murphy when each of you were discussing your testimony? A. I don't recall. Maybe so, but Mr. Starkey have a big office and he have a private office down there outside.

Q. Did you hear what Mr. Colson—Jesse Colson was saying to Mr. Starkey? A. No, I don't think so.

Q. Tell us, by some point in the courtroom, how big Mr. Starkey's office is. A. His private office?

Q. Yes. A. It is approximately from about from this point (indicating) to this point to here, I would say. It is just approximately a little larger.

Q. How deep is it? A. What do you mean by deep?

Q. You said it is that wide. A. Yes, about this wide, this width (indicating), and about from say here to this long or a little longer.

Q. From there to the wall? Is that what you are pointing out? A. Approximately, yes.

Mr. Carluccio: For the record, I think some dis-

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tance should be made, your Honor, because this and this would not appear on the record.

A. I will go and get a tape ruler and go down and measure it.

Mr. Carluccio: Your Honor I think can approximate it.

The Court: I will approximate it. About ten feet by about twelve, fifteen feet. All right.

Q. Did you know Jesse Colson to be a man of violence? A. What?

Q. Did you know Jesse to be a bad actor? A. I don't know.

Mr. Starkey: I will—

The Court: He said he didn't know.

Q. After he threatened you, did you come down and tell Mr. Starkey? A. Not at that point, no.

Q. How soon after Jesse threatened you did you come down and tell it to Mr. Starkey? A. Oh, I don't think I even told it to Mr. Starkey. I told him in front of his face —in front of his face I was telling him.

Q. Telling who? A. Jesse.

Q. Did you ever tell Mr. Starkey or Agent Murphy that you had been threatened? A. Yes.

Q. When was that? A. I don't remember that.

Q. And was that the time you were put under protective custody? A. No.

Q. How long after that conversation with either Mr. Starkey or Agent Murphy were you put under protective custody? A. I don't know. I have been under protective custody approximately about 15 days.

Q. And during these 15 days how often would you see Agent Murphy? A. I don't know. I would see him—ever

since last Tuesday I have been seeing Agent Murphy every day.

Q. Now, while you were in protective custody you have been going over your testimony in this case, reviewing your testimony? A. Have I been reviewing it?

Q. Yes. A. What do you mean, looking at it?

Q. No, discussing it, talking about. A. No.

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Q. So that until you saw Mr. Starkey last week, you had not discussed what your testimony will be since you were in protective custody? A. I don't know that.

Q. You don't remember? A. (No response.)

Q. Mr. Ellis, would you be good enough to tell us what Jesse Colson said to you that you considered a threat? A. You know, he called me a couple of names. He says "You are going around talking about me" and he said "I should have knocked you out," you know. And I raised up—I got up. He told me to sit down, you know. I told him "If you are going to shoot, Lester, start shooting."

Q. Were you afraid he was going to shoot? A. No, I weren't afraid.

Q. Do you know whether he ever shot anyone that made you say this? A. In other words, it didn't make any different whether he shot hundreds. It didn't make any difference to me.

Q. Did you know that he had shot somebody? A. Yes.

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Q. And when you said "Start shooting," weren't you afraid he might start shooting? A. No, I weren't afraid.

Q. You were not afraid? A. No.

Q. All right. Now where did this conversation take place? A. In Carter's Corner.

Q. That's uptown? A. Yes.

Q. That was one of the places that you and Jesse used to go together? A. Yes.

Q. Do you drink very much? A. Well, I drink.

Q. Hard liquor? A. Well, I drink whisky.

Q. Did you have any drinks the night you were arrested? A. No.

Q. This was about 9:30 at night? A. Yes, approximately 9:30.

Q. And you had no drinks all day and that evening? A. No.

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Q. Did you ask for a drink after you were arrested? A. No.

Q. Did Agent Murphy or the arresting officer take you in for a drink? A. No.

Q. Now, the next morning was it Agent Murphy who took you out of West Street?

The Court: Are you starting over now?

Mr. Pagoda: No, I haven't been on this at all, Judge. I haven't been on this.

Q. Was it Agent Murphy who took you? A. Yes.

Q. Did you have breakfast in the jail or did you have breakfast in a restaurant? A. Had breakfast in jail.

Q. Did you have any whisky to drink that day? A. Not until after.

Q. Not until after you got out of court? A. After I got uptown.

Q. You mean after you had been before the commissioner, right? A. Yes, after I went uptown to 139th Street and Seventh Avenue and Carter's Corner Bar. That's where I had my drink at.

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Q. Since you have been under government protective custody have you had anything to drink? A. Yes.

Q. In a bar or in a hotel where you are staying? A. In a bar.

Q. Agents have gone with you to a bar? A. Well, yes.

Q. They pay for your drinks? A. No.

Q. Are you being paid while you are in protective custody? A. I get—I think it is $4 a day for food.

Q. And from the $4 a day you buy yourself liquor? A. I have been working, too, you know.

Q. Have you worked at all since April 25th? A. Yes. I worked last Monday and Tuesday, and Saturday I worked.

Q. While you were under protective custody you were working? A. Yes.

Q. And was the government agent at the place of business where you worked? A. Yes, he is on the outside.

Mr. Pogoda: I have no further questions.

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The Court: We will recess until 10:30 tomorrow morning under the same instructions. Do not discuss the case with anyone. If anyone attempts to discuss the case with you, report the matter to the Court. Tampering with a juror is a very serious offense.

10:30 tomorrow. You must also remember that the case is not over. All the evidence is not in and you must reserve your judgment in this case until it is given to you for your deliberation.

10:30 tomorrow morning.

(Jurors left box.)

(Adjourned to June 22, 1961, at 10:30 a.m.)

Leon Ellis—for Government—Cross

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New York, June 22, 1961
10:30 o'clock a.m.

Trial resumed

(Jury in box)

LEON ELLIS resumed.

The Court: Shall we proceed, gentlemen?

Cross Examination by Mr. Somers:

Q. Good morning, Mr. Ellis; do you feel all right today? A. Fine, sir.

Q. Do you feel a little better than you did last night? We worked pretty late last night. A. I think I went to sleep about 9 o'clock.

Q. Your memory is good, I hope, today, isn't it? A. I think so.

Q. I just want to ask a few questions. Do you mind if I call you Schoolboy? A. No.

Q. Pretty nearly everybody calls you Schoolboy, don't they? A. Yes.

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Q. Most people know you by the name of Schoolboy rather than Leon or Leon Ellis? A. Yes.

Q. Tell me, Schoolboy, do you know a fellow by the name of Joe DeLeon in the narcotics business? A. I don't think so.

Q. You never heard of him? A. No.

Q. Did you ever hear of a fellow by the name of Leon Velasquez? A. No.

Q. Do you have a cousin by the name of Leon? A. (No response.)

Q. A cousin? A. Not as I know it.

Q. Do you know a fellow by the name of Leon Bradoni? A. No.

Q. Do you know any other Leon except Leon Aiken? A. I know a few but not their last names. In the street, yes, I know a few Leons.

Q. And your name too is Leon? A. Yes.

Q. By the way, before I forget, do you know the Purple Manor Bar on 125th Street in Harlem? A. Yes.

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Q. And did you have occasion, around the 10th or 11th of May, not too accurately about the dates, but after that, after you were arrested, to go to that bar? A. Yes.

Q. You were there with a federal agent? A. No.

Q. Alone? A. Yes.

Q. Did you see Leon Aiken, this defendant, at the bar when you were there? A. Yes, I saw him one time while I was there.

Q. You pointed him out to somebody? A. No.

Q. Now, Schoolboy, can you give me the date of your birth? When were you born? A. December 28, 1927.

Q. You are about 35 years old? A. 33.

Q. And where were you born? A. Lexington, Mississippi.

Q. And how long did you live there? A. Until I was sixteen.

Q. And did you have brothers and sisters? A. Yes. I

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have a brother and a sister.

Q. A father and a mother? A. Yes.

Q. Did you have to work while you lived in Lexington? Were you employed? A. No, I wasn't employed.

Q. You didn't have to take care of anybody in the family? A. My father was a pretty good provider.

Q. You went to school up until the time you were sixteen? A. Yes.

Q. And then you left Mississippi and went where? A. I volunteered for the Navy.

Q. You went into the Navy? A. Yes.

Q. How long did you serve in the Navy? A. About approximately two years and nine months, something like that.

Q. Were you ever AWOL while you were in the Service? A. No.

Q. Was your record good all the time? A. I had a 4.0 record.

Q. Never a captain's mast? A. Yes, I had a captain's

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mast.

Q. You had a little trouble here and there but you were very young, though? A. What?

Q. You had a little trouble but nothing very important? A. No. I was restricted—

Q. In the brig? A. No. I was restricted to the base a couple of times.

Q. Do you remember why? A. I think it was for disobeying the steward, or something like that.

Q. You were then about 17 or 18 years old, I take it? A. I was still 16.

Q. What sort of a discharge did you get? A. An honorable discharge.

Q. And then after you got out of the Navy did you go to Chicago? A. No. I went home.

Q. Back to Lexington, Mississippi? A. Yes.

Q. What did you do there? A. I went back to school.

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Q. And how far did you go back to school? Up to what grade? A. I stayed in school about four months.

Q. And then what did you do? A. Then I left and I came to New York.

Q. You came to New York? A. Yes.

Q. Not to Chicago? A. No.

Q. So that you had been in New York for the last, roughly, 18 or 18 years? A. No. From '46 to up to this time.

Q. Up until this time? A. Yes, sir.

Q. About 15 years? A. Roughly.

Q. And what have you been doing to earn a living in New York, will you tell me that again? A. Orthopedic mechanic.

Q. Orthopedic mechanic? A. Yes.

Q. That is your regular trade? A. Yes.

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Q. You are a member of the union, I take it? A. Yes.

Q. Have you got your union card with you? A. No. I have an old one with me, but I don't have the new one.

Q. I take it you have—well, we will accept that.

I take it you have a Social Security card? A. In my pocket?

Q. No. But you have a Social Security card? A. Yes.

Q. And you file income tax returns? A. Yes.

Q. When was the last time you filed? A. April 15, this year.

Q. April 15 of this year you filed an income tax return? A. Yes.

Q. And what did that return reflect? What sort of employment did that reflect? A. I have it in my pocket.

Q. You have it ready for us, is that it?

(Witness hands document to Mr. Somers.)

Q. This is your W-2 form, is it? A. Yes.

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Q. And you actually were working for Apex Foot and Health Products during this time, weren't you? You actually were employed by them? A. Yes.

Mr. Starkey: Your Honor,—

The Court: Mr. Somers, are you going to get back to this case soon?

Mr. Somers: If your Honor please my entire line of questioning has nothing to do with anything but this case.

The Court: Nothing but this case.

Mr. Somers: I am not interested in anything but this case.

The Court: Sir, I haven't been able to recognize it, and I am sure the jury hasn't been able to recognize it either, so please get on with this case.

By Mr. Somers:

Q. Now, in yesterday's testimony, Leon, you told us, in response to various questions put by the cross-examiners, that in 1956 you got a leave of absence from this firm? A. Yes.

Q. And what do you mean by a leave of absence? A.

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I just left the firm.

Q. You left the firm? A. Yes.

Q. And in late 1957 and throughout 1958, you engaged in the narcotics and numbers racket, is that correct? A. Would you mind repeating that question, please?

Q. Late in 1957 when you first met Jesse Colson, and throughout 1958 until October or November of 1958, your time was taken up primarily with narcotics and numbers, is that correct?

Mr. Starkey: Objection, your Honor. I submit that this information too has been well covered.

The Court: Well, the answer to that is yes, so let's proceed to something else.

Q. Isn't that correct? A. Yes.

Q. You were not doing very much in the Apex Foot business, were you? A. (No response.)

Q. Were you?

The Court: He said he was off for several years. It has all been explained. The jury understands all this. Let us get on.

Q. Do you know somebody by the name of Sylvia Ferris?

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A. Yes.

Q. Did you see her around here during the course of this trial? A. Yes.

Q. Do you know her or have you learned from any source at all whether or not she testified in the course of this trial? A. Do I know?

Q. Yes. Do you know whether or not, or has anyone told you whether or not, Sylvia Ferris testified in this trial? A. Yes.

Q. You know she did testify? A. She was in the witness room. She came in here. I don't know what she said in here.

Q. You were not present, I know. You didn't hear it? A. That's right.

Q. Do you know her association with Icky Thorn? A. Well, as far as I know, I thought they was old man and old lady.

Q. You mean husband and wife? A. I wouldn't say that.

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Q. Well, that is that they lived together? You knew they were close? A. I couldn't say they was living together. I saw them together a few times, yes.

Q. Where? Where did you see them together? A. At the hotel.

Q. That would be at 115th Street? A. Yes.

Q. Now, you saw them together at the same time Leon Aiken was there, isn't that correct? A. No, not exactly.

Q. Well, was there an occasion when you were down there that Leon Aiken was there at 115th Street at Icky's house? A. Yes.

Q. And didn't you say that when you came in there with Jesse, Icky and Sylvia were there? A. They was in the—the hotel is—you go in a room, and there are little rooms all around there, and they was over in another room.

Q. Well, wasn't it a fact that Sylvia Ferris, this young lady who was here as a witness, opened the door to let Leon in? A. No.

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Q. Well, who did? Do you remember that? A. Jesse.

Q. Jesse opened the door himself? A. Yes.

Q. Did he have a key? A. I don't know.

Q. But when you came in there Sylvia Ferris was there with Icky? A. No.

Q. Didn't you just tell us that Sylvia was there? Was she or wasn't she? A. I told you that she was in another little room there with a friend of hers and this little hotel, the quarters, you go in the hotel on this floor, and there are rooms all the way around in the little quarters there.

Q. She saw Leon Aiken there, though, didn't she? A. I don't know.

Q. Was it possible for him to sneak in there so that she couldn't see him? A. I don't know.

Q. Well, on the occasion when you came down there with Leon Aiken and Jesse, Icky and Sylvia were there?

Mr. Starkey: Your Honor, I will object, and I

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submit that the witness' testimony is clear in this regard.

Mr. Somers: It is not clear to me.

The Court: Well, he has been over it several times.

Q. She was there, wasn't she? Yes or no.

The Court: The witness explained exactly where she was, about the rooms, and so on, and about the differences in the rooms. That was my understanding of what he said, and he said it at least a half a dozen times so far.

Q. Schoolboy, do you remember the first time you were arrested in this case, the only time you were arrested in this case? A. I don't remember the date.

Leon Ellis—for Government—Cross

Q. If I tell you it was April 24, 1961, would that refresh your recollection? A. I don't remember.

Q. You don't remember? A. No.

Q. But you do remember making the statement that has been introduced here in evidence on the 25th in Mr. Starkey's office, don't you? A. I remember making the statement. I don't know what date it was.

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Q. All right. Now, how soon after you were arrested by the agents were you brought down to Mr. Starkey? A. The next day.

Q. The following day? A. Yes.

Q. And that same date preceding the day you were to see Mr. Starkey, that would be the day of your arrest you were taken down to West Street, I take it, the Federal Detention Headquarters? A. I was taken down to West Street. I got arrested about 9.30 at night and I was taken straight down to West Street.

Q. And early in the morning you were taken down to Mr. Starkey's office? A. I wouldn't say early in the morning. It was about 10.30. And Mr. Starkey was in court, and Mr. Murphy took me down in court and we waited until Mr. Starkey finished.

Q. And then do you remember substantially, in your own language, what was said between you and Starkey on this first meeting? What did Starkey say to you and what did you say to him? A. I don't remember.

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Q. You don't remember at all? A. No.

Q. Well, he was talking about your arrest, wasn't he? A. I don't remember.

Q. You don't remember that at all? A. No.

Leon Ellis—for Government—Cross

Q. Do you remember whether he said anything to you about narcotics? A. He told me what I was charged with. He told me I was charged with violating the narcotic act.

Q. And did he let it rest at that? Nothing else was said? A. I don't remember.

Q. Now, you don't remember that? A. No.

Q. So that when you were charged by Mr. Starkey with violating the narcotics act you said nothing? A. I said nothing?

Q. You said nothing? What did you say? A. I don't know what I said then. I don't remember.

Q. Well, suppose I let you look at this statement and maybe this will refresh your recollection as to what you

told Mr. Starkey (handing). Look it over.

The Court: All right, he has read it.

Q. Now, does that sort of recall some of the talk in Starkey's office to you? A. Yes. After I was arraigned in the Commissioner's office.

Q. Oh, you were arraigned before you spoke to Mr. Starkey? A. Yes.

Q. Well, in the arraignment this was shown to you, was it not (handing)? A. Yes.

Q. And you knew then that you were charged with possession of six ounces of cocaine on the 12th of February, 1958? That is what you were arrested for; is that correct? A. I understood that I was arrested for violating the narcotic act.

Q. And did Mr. Starkey tell you, in his office, that he was interested not only in this particular six ounces but he wanted to know generally your association with others in the narcotics racket? A. No.

Q. Didn't say that at all? A. No.

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Q. Well, how long were you there with Mr. Starkey talking to him, can you tell us that? A. When? What time?

Q. On the 25th, the day after your arrest, and following your arraignment before the United States Commissioner, you say that you were arraigned before the Commissioner before you were taken to Mr. Starkey's office; do I understand that correctly? A. No. I went to Mr. Starkey's office and he told me what I was charged with, and Agent Murphy and him took me downstairs to the Commissioner's office and I was arraigned.

Q. And then you came back after the arraignment to Mr. Starkey's office when you made this statement, isn't that correct? A. Yes.

Q. Now, in this statement you mentioned a great many things to which you testified here in court the last couple of days, is that correct? A. (No response.)

Q. Do you want me to read it to you? Don't you remember what you said? Have you completely forgotten this now that you are in court today?

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Mr. Starkey: Your Honor, I will ask him to ask one question at a time.

The Court: Why don't you ask this man some questions?

Mr. Somers: I am asking him specifically the conversation he had with Mr. Starkey.

The Court: The conversation is recorded and you have the statement right before you.

Mr. Somers: I know it, Judge.

Leon Ellis—for Government—Cross

Your Honor, this is cross-examination, I am attacking this man's credibility, nothing else.

The Court: Tell him what you told Mr. Starkey as best you can remember it.

The Witness: Would you mind repeating the question, please?

By Mr. Somers:

Q. Judge Wright has told you to tell us what you told Starkey and what Starkey asked or told you, as near as you can remember, when you were in Starkey's office on April 25th? A. Well, he asked me about—in other words, I told him I was willing to tell everything I know about this. I volunteered this information myself and took—

Q. You volunteered this information, is that correct?

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Mr. Starkey: Your Honor, the question was, tell everything that was said. I object to the interruption.

Mr. Pogoda: I move to strike out the answer, if the Court please, as not responsive to the question.

The Court: You said you volunteered. So tell us what you told him.

The Witness: I volunteered to tell everything that I know about this.

The Court: Tell us what you said.

The Witness: And every person that he asked me about, did I know, and what connection I had with him, I told him yes, and told him about the dealings I had—

Mr. Somers: Wait a minute. Just a minute, please.

The Court: Do you want him to answer the question now or what?

Mr. Somers: Your Honor, I want to get it seriatim.

Mr. Starkey: No, your Honor. I object to that. I ask that the witness be permitted to answer the question.

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The Court: I sustain the objection.

The Witness: (Continuing) And he was asking me about different persons.

By Mr. Somers:

Q. What persons? A. What persons?

Q. Yes. A. Aiken, Colson—

Q. Just a minute. He said to you—

Mr. Starkey: Your Honor, I will object to the interruptions. He has not finished his answer.

Mr. Somers: I don't want to reduce this to—

Please permit me to conduct my own cross-examination.

The Court: Overruled.

Mr. Somers: Thank you, your Honor.

The Court: I want you to know that you are not going to take up this Court's time and waste this jury's time. You make your points with this witness and let him alone.

Mr. Somers: That is all I intend to do. I am not going to harass you.

The Court: I want to make it very clear to you that that is all you are going to do.

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Q. Schoolboy, he asked you about Aiken? A. He asked me about everybody, the persons' names that he called, he asked me—

Q. Tell me the names. A. He asked me about Colson.

Q. Jesse Colson? A. Yes. He asked me what relation I had with him, and I tried to explain it to him the best I could. He asked me about Duke, and what relations I had with him, and I tried to tell him the best I can, the best dates that I had.

Q. And he asked you about Icky? A. Yes.

Q. And he asked you about Sylvia Ferris? A. Yes.

Q. And he asked you about Winston Massiah, perhaps? A. Yes.

Q. And he asked you about Lenny Aiken? A. Yes.

Q. Just like that? A. No, not just like that. He asked me did I know Leon.

Q. Did he ask you if you knew Leon Aiken? A. No.

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Q. He didn't ask you if you knew Leon Aiken? A. No. He asked me did I know Leon. I said yes.

And he asked me what kind of dealings did I have with him, and I explained to him the best I could.

Q. Now, he mentioned these fellows by the names, I take it, that you have just given us? He said, "Duke." He didn't say "Maxie Anfield", or anything like that? A. I told you the best I could.

Q. The best you can remember? A. Yes.

Q. And did he also ask you about this particular transaction of February 12th for which you were arrested, February 12, 1958, the six-ounce deal? Did he ask you about that? A. I was in Mississippi February 12, 1958.

Q. You and I know that, of course, but did Mr. Starkey ask you about that? A. When I was arrested—

Q. Let's begin again. Let me show you the complaint signed by Mr. Murphy charging you with possession.

The Court: He has already seen the complaint.

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Did Mr. Starkey ask you anything about having six ounces of cocaine on February 12, 1958? Did he ask you anything about that at all?

The Witness: I don't remember.

The Court: He says he doesn't remember.

Q. You don't remember that? A. No.

Q. Well, now, you were concerned about your particular case for which you had been arrested the previous day, weren't you? A. What particular day are you talking about?

Q. Well, I don't want to confuse you. On the 24th of April, Schoolboy. A. 24th of what?

Q. On the 24th of April you were arrested and on the 25th, the following day, after you were brought down from West Street, you were arraigned—you know what an arraignment is, don't you? A. Yes, sir.

Q. You were arraigned before the United States Commissioner, Mr. Bishopp, I imagine Commissioner Bishopp, weren't you, downstairs here? A. Yes.

Q. And at that time this—well, now, before I ask you

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that, you had some experience with the law before this, with the criminal law, didn't you?

Mr. Starkey: Objection.

The Court: We have been through this before. Objection sustained.

Q. You have, haven't you?

The Court: I sustained the objection.

Leon Ellis—for Government—Cross

Q. You knew that you just couldn't be arrested and not be informed of the reason for your arrest, didn't you?

Mr. Starkey: I will object to that, your Honor.

Q. Did you know that?

Mr. Starkey: I will object to that as irrelevant.

A. No.

The Court: He said he didn't know that.

Q. But you did know when they read this complaint to you, in the Commissioner's office, that you were being charged solely and only, and with nothing else but possession of six ounces of heroin, or, rather, of cocaine?

Mr. Starkey: Objection to that, your Honor. It assumes a fact not in evidence, that the government's

criminal proceedings are limited to charges that are set forth in a complaint at the time of an arrest. It assumes that, and I think counsel knows it is not so.

The Court: I will overrule the objection. Ask the question again.

Q. You knew that this was the only thing that you were charged with, six ounces of cocaine, on the 12th of February, 1958? A. I didn't know that. I thought—Jesse Colson was telling me that I was charged with about 3½ kilos of cocaine, and he told me I was going to be on the indictment about fifteen or twenty papers, I don't know.

That is what I understood. I was charged with conspiracy of violating the narcotic act.

Q. I see. At the time of your arrest on the 24th of April you were fearful of being apprehended in connection with a conspiracy indictment that Jesse Colson had told you about, is that correct? A. I was what?

Q. You were afraid of being indicted, charged with participation in a conspiracy, lots of kilos and stuff? A. Yes, I was very scared about that. I was so scared until I called the FBI up and told them to come up and arrest me, and they called to 32nd Street Precinct, to the Narcotics

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Squad, and they came to my house and asked me what did I want to be arrested for.

I said I heard that the Feds was looking for me, and I said if they are looking for me I want to give myself up.

And they told me that they didn't have nothing in the FBI report, and just if anybody else comes and asks me that the FBI is looking for me, just give them his number. His number was in the 32nd Squad of Narcotics.

Q. Then I understand you knew, before you got this particular bust, that you were wanted by the Feds for this conspiracy, is that right? A. Jesse had told me.

Q. Incidentally, when did he tell you that? A. He told me that almost daily.

Q. That would be for six or seven months prior to this? A. Oh, yes.

Q. See, now, take it easy. Get your dates right. This was 1961. A. He told me a little after that he was indicted that they was looking for the whole syndicate, everybody was in it, they were looking for them.

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Q. Everybody was in it including you? A. Yes.

Q. How much do you weigh? A. How much do I weigh?

Q. Yes. A. About 168 pounds.

Q. And you are about five feet nine inches? A. Five eight and a half, something like that.

Q. Read the title of this indictment aloud? A. (No response.)

Q. Read it aloud. A. (Reading) "The grand jury charges on or about the 6th day of May, 1958, in the Southern District of New York, Winston Massiah, Jesse Colson"—

Q. No. Just the title. I don't want you to read the whole thing. Just this: United States of America against— A. (Reading) "United States of America against Winston Massiah, Jesse Colson, Mitchell Anfield, Granville Smith, Noel Maxwell, William Adams, John Henry Purry, Clarence White, Nick Holiday, Icky Thorn, Sylvia Ferris, John Doe, Leon"—

Q. John Doe, a/k, right? A. Yes.

Q. That means "also known as."

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All right, continue. A. (Continuing reading) "meaning thereby to describe"—

Q. No. Mention the name. "also known as" what?

Mr. Starkey: Your Honor, I object to—

Q. The name. Give me the name.

The Court: I will sustain the objection. If you want it read, read it aloud yourself.

Mr. Somers: All right, I will read it.

This indictment reads as follows:

"United States of America against Winston Massiah, Jesse Colson, Mitchell Anfield, Granville Smith,

Noel Maxwell, William Adams, John Henry Purry, Clarence White, Nick Holiday, Icky Thorn, Sylvia Ferris, John Doe, also known as 'Leon', meaning thereby to describe a Negro male of medium complexion, with black hair and a medium build, approximately 40 years old, approximately 5' 9" tall, and weighing approximately 165 lbs."

Q. Now, that Leon is you, isn't it? You are the man in this indictment described this way, aren't you, Schoolboy?

Mr. Starkey: Your Honor, I will object to that.

The Court: Do you know whether or not you

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are in this indictment?

The Witness: I don't know, sir.

The Court: All right, he doesn't know.

Q. Aren't you that man?

The Court: He said he doesn't know.

Q. You don't know. But you were fearful, at the time of your arrest, and just before, that you, with Jesse and all the rest, had been indicted, charged with conspiracy; isn't that correct? A. I don't know.

Q. You don't know? A. I don't know.

Q. Isn't that so?

The Court: He says he doesn't know.

Q. You don't know? A. (No response.)

Mr. Somers: Mr. Aiken, will you please stand up?

(Defendant Aiken rises.)

Leon Ellis—for Government—Cross

Q. How much would you say Mr. Aiken, this defendant, Leon Aiken, weighs?

Mr. Starkey: Objection.

The Court: I sustain the objection.

Mr. Somers: All right, Mr. Aiken, sit down.

—1025—

Q. Will you tell me about how big Leon Aiken, the man you have described repeatedly in these transactions, is? How tall? A. I don't know.

Q. You don't know? A. No.

Q. You saw him a number of times but you don't know? A. No.

Q. Would you tell us how much he weighs? A. I don't know.

Q. Would you tell us whether or not he was a man of medium—that would be not too dark, not too light complexion? You couldn't say that either, could you? A. No.

Q. You don't know? A. No.

Q. Incidentally, you don't even know, although you have told us repeatedly that you were in his car, what make of car it was; isn't that what your response to Mr. Pogoda's question was yesterday? You didn't know the make of the car? A. I don't know.

Q. And you didn't know the color of the car? A. I

—1026—

don't know.

Q. And you didn't know the year model of the car, did you? A. No.

Q. You didn't know any of those things? A. No.

Q. Now, you told us yesterday, in response to the examiner's questions, that you had been in Mr. Starkey's office eight or ten times; that's correct isn't it? A. Yes.

Q. So that between the 24th of April and June 6th when you made the second statement— Have you got that right, the 25th of April and June 6th? This, today, is the 22nd of June. So we are bringing you back, now, to June 6th. You were in his office then, weren't you? A. I don't know.

Q. Well, I will show you this. I don't want you to be confused. I will show you this statement again dated June 6th, your statement in Mr. Starkey's office.

With that in mind does that refresh your recollection that you were there June 6th? A. Yes.

—1027—

Q. And we know you were there April 25th because this statement indicates that date and we have no reason to disbelieve it.

Now, between those two dates you were there eight or ten times, weren't you? A. I don't remember.

Q. You don't know that? A. No.

Q. Now, do you know that this indictment was filed March 3rd, 1961 of this year; is that correct?

Mr. Starkey: So stipulated, your Honor.

Q. Did you know that? A. No.

Q. No one ever told you that? A. No.

Q. Did you know that Mr. Aiken, this defendant that you talked about yesterday, was first arrested on May 13th of this year, 1961? You didn't know that? A. No.

Q. You knew, of course, that Jesse Colson was arrested back in 1959, although you didn't know the date? You knew that, didn't you? A. Yes. I didn't know the date.

Q. Did Jesse Colson tell you that he had been talking

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to the Feds? A. Told me?

Q. Yes. A. No.

Q. He didn't tell you that? A. No.

Q. Did he tell you to talk to the Feds? A. No.

Q. No? A. No.

Q. You did just as you said, you volunteered? A. Yes.

Q. You wanted to relieve your conscience, is that your reason? Did you get religion? Just tell me why did you do it? A. Why did I do it?

Q. That's right, why did you do it? A. Well, I was tired of running.

Q. Tired of running? A. Yes.

Q. And actually you knew that all you were charged with, so far as the government was concerned, was this six ounces of cocaine that you were allegedly in possession of on the 12th of February?

Mr. Starkey: Objection.

The Court: The witness has said many, many

—1029—

times that he didn't know that. We know it is on the paper and that he was charged with it, but he said many, many times that he didn't know it.

Q. Now, no other charge had been brought to your attention by the Federal Government other than this, put it that way? A. But I know what Jesse told me.

Q. Just a minute. The Federal Government had not charged you with anything? Nobody had picked you up before this? A. I don't know.

Q. No? A. I don't know.

Q. And you knew that February 12th was Lincoln's Birthday, surely, didn't you know that? Do you know that February 12th is Lincoln's Birthday?

Leon Ellis—for Government—Cross

Mr. Starkey: Your Honor, I will object to the harping on this February 12th date. The witness has testified as to his knowledge insofar as that is concerned, and I submit that any further questions in this area are repetitious and irrelevant.

Mr. Somers: Nothing is irrelevant, your Honor, if I may respectfully submit, with respect to this cross-examination.

—1030—

The Court: I will sustain the objection. We have been over it many times.

Q. All right. You were down south on February 12, 1958? A. Yes.

Q. Is that right? A. Yes.

Q. So you would have an alibi, wouldn't you? You know about alibis, don't you, Schoolboy? Do you know what an alibi is? A. I went to bury my mother.

Q. You went to bury your mother? A. That is an alibi, a pretty good one.

Q. So you knew that they couldn't pin this rap on you, didn't you?

Mr. Starkey: Objection.

The Court: Did you know that you were charged with something on February 12, 1958?

The Witness: No, I didn't, your Honor.

The Court: Now he has answered that at least a half a dozen times.

Q. Now, Schoolboy, you told us that you have lived in Harlem for many years, and you have told us that you had some prior experience with narcotics, that is to say,

you saw it around a great deal of time, a great deal of it,

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in Harlem?

Mr. Starkey: Objection to a monologue, and objection to questions on questions and repetition.

The Court: Well, he said it yesterday. All right, go ahead.

Q. And you know something about what happens to guys who get caught and convicted of narcotic violations, don't you? A. I know, but I didn't know the penalty. I didn't know the direct penalty.

Q. You never knew the penalty? A. Not directly.

Q. Did you know it indirectly? A. No.

Q. Did anybody you know or ever heard of go away for violation of the narcotic laws? A. Yes.

Q. What did you hear about sentences, fellows going away? A. I didn't hear you.

Q. All the time you have been in Harlem, the years that you have been floating around in the numbers racket, you never heard of anybody being sentenced on a narcotic rap in Harlem, is that right?

—1032—

Mr. Starkey: I will object to the form of that question. It is a summation rather than a question.

The question, I submit, was bad in form. I object to it.

The Court: That is overruled.

Counsel wants to know whether or not you had ever heard of people who had been sentenced for narcotic violations.

The Witness: Yes. I had heard people say that

this fellow got five years, this fellow got ten, something like that.

Q. Did you ever hear of fellows getting 25 years? A. No. I read in the paper that some guys got 25 years, yes.

Q. Does that give you any feeling that this was a very dangerous business? A. Yes, I know it was dangerous because what I did was very dangerous, but three or four kilos, don't you think that is dangerous?

Q. I sure do think it is dangerous. I agree. A. And I agree with you.

Q. That this was very dangerous. You were in a very dangerous business. A. Yes.

—1033—

Q. And knowing you were in a very dangerous business, you knew that if you were caught you might get a very long term in prison? A. (No response.)

Q. You were not interested at all in the possibility of prosecution? A. I was just trying to keep from getting caught.

Q. You were interested in not getting caught? A. We were just interested in keeping from getting caught.

Q. But having been busted weren't you—do you know what "busted" means? A. Sure I know.

Q. Tell the jury what that is. A. "Busted" is when a guy gets picked up for something.

Q. Having been busted, weren't you concerned with the possibility of a defense, defending yourself? A. Being busted for what?

Q. For narcotics. A. (No response.)

Q. You never thought about being busted in this dangerous racket that you were engaged in? A. I only think

about not being caught. That is the only thing you think

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about.

Q. Not being arrested? A. Yes.

Q. And having once been caught, you felt that you would just unburden yourself? Was that your feeling? And you would tell everything you knew? A. I don't know what you mean by that question.

Q. Well, now, you are here in court, and you were in Mr. Starkey's office back in April telling a lot of things about a lot of people engaged in the narcotics racket. A. I told what I know and how I know it, and the best way I remembered what happened.

Q. Yes. All I want to know is, Schoolboy, why did you tell it. A. Why did I tell it?

Q. Did he hit you over the head with a brick?

Mr. Starkey: I submit that this question has been asked and answered.

The Court: Overruled.

Tell him again.

Q. Why did you tell?

Mr. Somers: Your Honor, I beg your Honor's pardon. He hasn't told us.

—1035—

Q. Tell us for the first time—

The Court: All right, just tell him.

Why did you tell Mr. Starkey and the other agents all about this?

The Witness: I told them because I thought I would get a break for myself.

Q. That's all I wanted to know. You thought you would get a break for yourself? A. Yes.

Q. So you don't feel very good about bringing in all these others, do you? A. Who brought in all the others?

Q. Well, you have implicated Icky Thorn, you have implicated Duke, you have implicated Aiken, and that doesn't make you feel very good, does it?

Mr. Starkey: Objection, your Honor.

Q. How do you feel about that?

The Court: I sustain the objection. Let us proceed now. You got an answer to your question.

Q. The answer is that you wanted to help yourself, isn't that so? That is what you are saying? A. Yes.

Q. And in helping yourself you wanted Mr. Starkey to be sure that you were cooperating and were going to tell

him everything that you knew, is that correct? A. I told him everything he asked me what I knew.

Q. And what you told him, of course, was true? A. To the best of my knowledge, yes, the best I could remember.

Q. And you were there eight or ten times between April 25 and June 6 so that you had time to recall, in that period, everything that happened in the '57-'58 transactions; is that correct? A. No.

Q. What do you mean, no? A. No.

Q. You were there April 24?

Mr. Starkey: The question was, "What do you mean, no."

Q. All right, answer that.

The Court: Can you answer that question?
The Witness: No, sir.
The Court: He said no, so let's proceed.

Q. Well, you had plenty of time to think over what you had told Mr. Starkey and what you were going to tell him between the 25th day of April and the 6th of June, didn't

—1037—

you? A. Well, these things don't ever leave your mind. You always wake up in bed and you think about the time you had this kilo, and the time—and that scares you.

Q. And you can remember other things, isn't that right? A. It comes back to you.

Q. It comes back to you? A. Yes.

Q. So that between April 25th and the 6th of June—the 25th of April and the 6th of June things came back to you, didn't they? A. Yes.

Q. So that when Mr. Starkey told you, on June 6th, Mr. Starkey said:

"Q. Now, your name is Leon Ellis? A. Right.

"Q. And you gave a statement where you answered some questions that I asked you on April 25, 1961 in this office with Agent Murphy also present and the same lady taking the notes on that occasion? Do you recall that? A. Yes.

"Q. Is that a true and accurate transcription of the questions and answers on that date? A. Yes."

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That was right, wasn't it? You were testifying in this second response that your first statement was accurate and true? A. The best I could remember.

Mr. Starkey: Your Honor, I will object to the characterization. He said it was an accurate and true transcript of the questions and answers given at that time. There was no question about the contents.

The Court: I think the jury understands. Let us proceed.

Q. All right. Now, incidentally, you said a few minutes ago that you called up the 32nd Narcotics Squad and said, "Come on over and get me." A. I called up the FBI.

Q. And at that time you were prepared to be arrested and to talk; isn't that correct? A. Yes.

Q. Didn't you prepare, however slightly, in your mind what you were going to tell them? A. I wasn't preparing to talk. In other words, the things that I did almost come back to my mind, I know who I did them with, and just about the approximate time, what I did, so I didn't have to prepare anything.

Q. Incidentally, why didn't you tell Mr. Starkey, on

April 25, that—

Did you tell Mr. Starkey, on April 25, when you were in his office on the first occasion, and you were telling him about Icky Thorn, and all the others, you told him about Leon Aiken, did you not? A. I didn't know Leon's name.

Q. You didn't know that Leon's name was Aiken, did you? A. No.

Q. When did you first find that out? A. In the paper.

Q. The first time you found out that Leon's last name was Aiken was when you saw a paper report, a newspaper report, of his arrest? A. Yes.

Q. Then you knew his name was Aiken? A. Yes.

Q. Up until that time you didn't know it? A. No.

Q. And then Mr. Starkey told you his name was Aiken on the 26th of June, didn't he? A. No.

Q. He said to you:

"Q. Do you now know his name to be Leon Royal Aiken?"

—1040—

A. I saw it in the papers. That is how I know.

Q. That's right, then, isn't it? A. Yes.

Q. The first transaction that you had that had any sizable sum of money with Aiken, I am speaking now, was that $5,000 deal? You told us again and again. A. Yes.

Q. And you are sure of that, aren't you? A. Yes.

Q. Now, do you remember this question by Mr. Starkey in your office, which was reduced to writing:

"Q. Was the amount of cocaine discussed? A. No. I will take it big.

"Q. Well, the amount ultimately delivered was about six ounces? A. Yes.

"Q. Did you receive the money in advance from him?"

Mr. Starkey: Your Honor, I am not clear as to the purpose of the reading of these questions and answers, but one was just skipped and—

Mr. Somers: I will read it all, if you like, Mr. Starkey, so that there will be no question about it.

Mr. Starkey: All right, sir. If counsel is going

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to read it, I would ask that he read it all, and if he wants to examine the witness about it, I request that he examine him.

The Court: If you want to read the statement, you may read it all.

Mr. Somers: Mr. Starkey is inferring that I am taking this out of context.

The Court: You can't skip around in it either, and then ask him questions about it.

Mr. Somers: I want the Court to understand, if I may say, most respectfully, Judge, that I am referring specifically to the first transaction. Mr. Starkey has this original transcript. He knows what I am referring to, and he can check me very quickly, that is, if I take this out of context.

If you feel that I am taking it out of context, I will be glad to read it and stop here and there.

The Court: Would you mind proceeding with your cross-examination, please.

By Mr. Somers:

Q. Now, do you remember, Mr. Ellis, Schoolboy, do you remember Mr. Starkey, again on the 25th, in his office, of April, discussing your first transaction directly with Leon, and Mr. Starkey's question was:

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"Q. Now, did there come a time, then, in the first month or two of 1958, when you talked to Leon about Colson's cocaine? A. Yes.

"Q. What did you tell Leon? A. I told him I know a fellow that is bringing in some stuff and if he is interested I can get him some."

Do you remember that? A. Yes.

Q. And Mr. Starkey's next question:

"Q. What did he say? A. He said yes, he would be interested in it."

Do you remember that? A. What month did you say that was?

Q. Well, Schoolboy, we are now talking about your talk in Starkey's office when you wanted to tell him everything about everything you knew, and all the people you knew. A. Would you mind reading it again, please?

Q. Yes. I will start again. Mr. Starkey had been talking to you for quite a little while before he reduced this to writing, is that correct? This wasn't typed—

The Court: Would you mind getting on to the cross-examination, please?

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Q. The question was:

"Q. Now, did there come a time, then, in the first month or two of 1958, when you talked to Leon about Colson's cocaine? A. Yes.

"Q. What did you tell Leon? A. I told him I know a fellow that is bringing in some stuff and that if he is interested, I can get him some."

Do you remember making that answer? A. Yes.

Q. Then Mr. Starkey's question:

"Q. What did he say? A. He said, yes, he would be interested in it."

Do you remember that? A. Yes.

Q. And then Mr. Starkey's question:

"Q. Was the amount of cocaine discussed? A. No. You know, he said, 'I will take it big'."

A. Yes.

Q. And then Mr. Starkey's question:

"Q. Well, the amount ultimately delivered was about six ounces?"

A. Yes.

Q. And your answer was "Yes", is that right? A. Yes.

—1044—

Q. Then the question:

"Q. Did you receive the money in advance from him?"

Mr. Starkey: Your Honor, again a question was skipped.

Mr. Somers: I will read it if he wants it.

Q. The following question—

The Court: Mr. Somers, let's agree that he made the statement and he gave the statement just as it is there.

Mr. Somers: That is not sufficient, I beg the Court's pardon. This is on credibility. This is cross-examination.

The Court: You better look to the jury about this cross-examination and see whether they think it is cross-examination.

Mr. Somers: Your Honor, I have to conduct the trial as best I see fit. I beg your Honor's pardon.

The Court: All right, proceed.

By Mr. Somers:

Q. Now, Schoolboy, then Mr. Starkey's question was:

"Was there any conversation between you and Leon in the beginning about how much he would be taking?

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A. He said he would take it all if it is pure stuff."

Do you remember that? A. Yes.

Q. Now Mr. Starkey's question:

"Q. Did you receive the money in advance from him?"

Do you remember that question, Mr. Starkey asking you: "Did you receive the money in advance?" A. Yes, I remember that question but I thought he was speaking about that particular time.

Q. I beg your pardon. A. I thought he was talking about that particular time I was talking to Leon, did I receive the money in advance, and that answer is no.

Q. No. I don't understand you. You thought what? I didn't quite follow you. When he was questioning you, you say you misunderstood Mr. Starkey? A. You want me to give it to you over again?

Q. Yes. I didn't quite get it. A. He was asking me did I receive any money in advance, and I thought he was talking about that particular time that I was talking to Leon that we was talking about cocaine.

Q. No, no. He said to you, again, let me repeat Mr.

—1046—

Starkey's question— A. I just told you what I thought that he was saying. I made a mistake and said—

Q. You made a mistake, didn't you? A. Yes, but I—

Q. Well, now, look. In other words, you know that your testimony in this court, after repeated interrogation by these cross-examiners, was different from your statement to Mr. Starkey; now you know that?

Mr. Starkey: Objection, your Honor. I think that is a question that the jury is entitled to decide and that—

The Court: I sustain the objection. You are arguing with the witness.

Q. Then you told Mr. Starkey that you delivered six ounces of stuff to Aiken for $3600, that is $600 an ounce, didn't you tell him that?

Mr. Starkey: I will object, your Honor, to counsel's characterization or paraphrasing of the questions. If he is going to ask about questions at this time, I would ask that the questions and answers be read.

The Court: Well, he has read them about four times. We have had enough of them.

—1047—

Answer the question the best way you can.

Q. How do you explain that, that you told Starkey you sold, on your first deal with Mr. Aiken, with Leon, you sold six ounces at $600 an ounce? That is what you sold and that is what you delivered, and you told us in court again and again, that you got $5,000. A. Well, I think that question was—Mr. Starkey asked me how much the cocaine was selling for and I told him $600 an ounce. At $600 an ounce it would be $3600.

Q. $3600? A. $3600. That was the question that I answered of Mr. Starkey at that time. And if you read down further I think I told him what was the thing—

Q. Yes. I know. I can read that and we will read it to the jury when the time comes.

Now, Schoolboy, then you told Starkey, on April 25 of this year, that you had sold $3600 worth of cocaine, or at least six ounces, at $600 an ounce, in your first deal with Mr. Aiken. That is true, isn't it? That is what you told him? Whether you did or not, that is what you told him, isn't it? Yes or no. A. Yes. I think he asked me how much the cocaine—

Q. No, no.

—1048—

The Court: Just a minute. You asked a question. Let him answer it.

A. He asked me how much cocaine did Leon get in the first delivery.

Q. How much did you say? A. I told him approximately six ounces.

He asked me how much would that be an ounce. I told him what it sells for, $600 a ounce, but Leon got a wholesale price on the deal.

Q. That's right. Leon got six ounces, which normally would cost $600 an ounce, which would be $3600, but he got it wholesale, so he paid, for six ounces, $5,000. That is $850 an ounce. A. He paid $2500.

Mr. Starkey: First of all, it says "approximately 600."

The Witness: He paid $2500 for it.

The Court: All right. Let's proceed.

Q. You just told us—did I understand you to say that you don't know whether you are the Leon in this indictment? A. No.

Q. Now look over this indictment, Schoolboy, and read

it over to yourself. Take as long as the Court will permit

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you. A. I just looked over it before.

Q. You looked over the whole indictment? A. No. I looked over the names.

Q. Look again. Look at the names. A. I did that before.

Q. You don't want to do it now. A. I did that before.

Q. Do you see, anywheres in this indictment, the name, anywheres in this indictment, either as a conspirator, or as a defendant, or mentioned in the overt acts of this indictment, the name Leon Ellis? Do you see that? A. (No response.)

Q. You don't see that?

Mr. Starkey: Your Honor, I will object. The indictment speaks for itself.

The Court: I sustain the objection.

Mr. Somers: Your Honor, I am merely using the indictment for cross-examination.

The Court: I sustain the objection.

Mr. Somers: Exception.

Q. Nowhere in this indictment does that appear?

Mr. Starkey: Your Honor, counsel has ignored

—1050—

the Court's ruling.

The Court: Mr. Somers, I am putting you on notice. Now proceed.

Q. Schoolboy, I ask you again, bearing in mind that you did not see your name in the indictment mentioned

anywheres except insofar as the title says, "Leon, also known as John Doe", and the description of a male Negro of light complexion, five feet nine in height, approximately 165 pounds, do you still say that that is not you in that indictment?

Mr. Starkey: Objection.
The Court: I sustain the objection.
Mr. Somers: Exception.

Q. All right. Now, did you have any other customers besides the ones you have mentioned? Did you ever sell any narcotics during this period of time, Leon, to others? A. No.

Q. The only people you ever did business with was with whom? A. Leon and Tilly.

Q. Leon and Tilly? A. Yes.

Q. Those were your only two customers? A. I couldn't

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get it small.

Q. You mean you didn't want to do business— A. No. I couldn't because the fellows that I was doing business with wouldn't give it to me. I couldn't get no small stuff like spoons and like that, because they wouldn't let me have it.

Q. Tell me, Schoolboy, who were these fellows you were doing business with that wouldn't give it to you? A. Jesse Colson.

Q. Jesse Colson was your only source? A. Well, he told me Duke was his partner, but later, when he was getting the big shipments Duke was out.

Q. Now, with respect to that, you testified yesterday that after you came back from Mississippi you met Duke and

Duke said to you that he was going to deliver a package to Leon Aiken, and you went with him and helped him deliver the package, or you accompanied him, anyway; you did tell us that, didn't you? A. No, I didn't.

Q. You didn't tell us that? A. I told—I didn't tell you anything about Leon Aiken. I said Duke said that he had a package for your man and we went around to 136th

—1052—

Street and went up to a friend of Duke's house, we stayed up there approximately an hour and a half, and I came down and saw Leon, and we got in his car and drove off, and Duke give Leon the package and Leon gave him some money, and I went down to Duke's house and he gave me $75, and I went back uptown.

Q. That's right. I recall just what you said, Mr. Ellis. Ellis.

Now, why did he give you $75? A. Well, for going with him.

Q. Just for going with him? A. Yes.

Q. You got $75 just for going with him? A. Yes.

Q. That's all? A. Well, maybe he liked me or something.

Q. Or maybe he liked you? A. Yes.

Q. Do you think he liked you? A. I don't know.

Q. Did you like him? A. I don't like no boys.

Q. You don't like no boys? A. I don't like boys. I like girls.

Q. Very good. Very good. You didn't have any ani-

—1053—

mosity, any hatred, against Duke, did you? A. No.

Q. And you haven't now that you are testifying as you are, you have no hatred against Duke? A. No.

Q. Or Jesse Colson? A. No.

Q. Now, did you think Jesse Colson was a reliable man to work with? A. I didn't give it any idea.

Q. Did you trust him? A. Not too much. You don't trust nobody around cocaine. You only trust yourself. Who can you trust?

Q. Cocaine dealers are not trustworthy. You have to watch out for your own self, isn't that correct? Don't you? A. (No response.)

Q. Now you testified that after you had this talk with Duke, during your talk with Duke, that Duke told you that he had had a falling out with Jesse, Jesse was cheating him; do you remember saying that, that Jesse was cheating him? A. What talk is that that you are speaking of?

Q. All we know from your testimony is that when you came back from Mississippi, after your mother's funeral,

you met Duke and Duke and you had a talk, and in the course of that conversation Duke told you that Jesse had cheated him; didn't you tell him that Jesse had cheated him? A. When I got back from Chicago, Jesse came down to my house and told me that he didn't have any more coke, that him and Duke had turned the last deal with Leon, and him and Duke had an argument about the car, and he told me to go down to Maybelle's mother's house to see if I could see Duke, and see what he was angry about, and that is the time we had the discussion, me and Duke.

He told me that Jesse was cheating him in the business and was cheating him out of money.

Q. Duke told you that Jesse was cheating him? A. Yes.

Q. And you also testified that in this prior transaction

that you had had over at Tilly's with Aiken, that Aiken complained that it was short? A. Yes.

Q. So now you knew that Jesse was dealing in short weight, and that Duke, his partner, who you thought was his brother—didn't you think that Duke was Jesse's

—1055—

brother? A. Yes, at the time.

Q. And that Duke, Jesse's own brother, said that Jesse was a cheat? You knew that? You had heard that, didn't you? A. Well, are you going back? You are not going forwards now.

Q. You go on and tell us. A. You want me to tell you about me and Tilly and Leon, when we was up in this little room and the stuff was short, it was a little short, and Leon asked me could I get any contact with my man, and I told him no, and he said, "Oh, that's all right," and Tilly asked Leon where he was going around 136th Street, and Leon said yes, and he said, "Why don't you let Schoolboy take it?"

And he said, "He ain't never been busted."

Q. Hold it, Schoolboy. Hold it. We are talking now only about— A. I am trying to answer what you asked me.

Q. I will ask you now, on that first occasion the very first time you met Leon was when you delivered $300 worth of stuff down to Tilly's, isn't that right? Leon came in later? Isn't that your testimony? A. Yes.

Q. And then the stuff was weighed or spooned, or how-

—1056—

ever you work with cocaine, and Leon complained that it was short? A. Yes, he said it was a little short.

Q. So that you knew then that Leon was accusing Jesse

of shortweighting him; isn't that right? A. Well, it could have been either way. He was accused, yes.

Q. And then later Duke told you that, and Duke, who you thought was Jesse's brother, he told you that Jesse had been cheating him in deals that Duke and Jesse had together? You heard him say that to you, too, didn't you?

The Witness: Would you mind repeating that?

(Question read.)

Q. Duke and you had a talk, if I recall correctly; Jesse said, "He is mad at me; go down and talk to him," or something like that, and you went down to Duke's girl friend's mother's house and you saw Duke; that's correct, isn't it? A. Jesse told me that Duke was mad at him.

Q. Now wait a minute. But you saw Duke right after that, didn't you? A. If you let me answer it, I will answer it for you.

Q. Wait a minute. You saw Duke shortly after Jesse

told you that Duke was mad at him, isn't that correct? A. I am going to tell you how it happened.

Q. We don't want to hear it again. We have heard it. Now you did see him then, and you spoke to Duke; isn't that correct? A. Yes.

Q. And Duke told you, amongst other things, that Jesse had been cheating him, robbing him; didn't he say that? A. He suggested it was Jesse who had been cheating him in the business.

Q. Now you had two complaints in your short experience with Jesse, one from a customer and one from a man you thought was his own brother.

And you know, you just testified, that nobody trusts anybody in the narcotics racket, you look out for yourself. When Jesse—

Mr. Starkey: Your Honor, again I think we have something of a monologue here, and a summation.

The Court: Mr. Somers, just ask him questions.

Mr. Somers: I will try to, Judge. I am sorry.

The Court: Suppose we take a five-minute re-

—1058—

cess.

(Short recess.)

By Mr. Somers:

Q. Schoolboy, do you remember the second kilo that you spoke about? That would be the Chilean people that came up, the man and woman; do you remember that? The time late October of '58 when this other delivery came from Chile to Colson at his house? Do you recall that episode? A. Yes, around the last of September.

Q. I am not particularly concerned about the date but— A. Something like that.

Q. Yes. Now, you were up at his house when these people came in, the man and woman? A. Yes, sir.

Q. And do you remember when you spoke to Starkey and were telling Mr. Starkey all about this that you discussed that second kilo shipment with him, didn't you? A. (No response.)

Q. You discussed it with him, didn't you? A. He asked me questions and I told him, yes.

Q. Now, this was a shipment, a very large shipment, that was being smuggled in from abroad, from South

—1059—

America, wasn't it, that you were talking about? A. Yes.

Q. And Mr. Starkey spent some considerable time going over the details of that with you? A. I don't know.

Q. You don't remember? A. (No response.)

Q. Now, you had eight or ten visits there, and didn't he, during those times, discuss that shipment of a kilo from South America with you, the second kilo? A. He asked me the persons, and I told him the best I know how.

Q. He asked you a lot of questions about it, didn't he? A. He asked me questions.

Q. And he showed you pictures in connection with the people that brought the stuff up, didn't he? A. No.

Q. Well, you said he did? A. Not at that time, no.

Q. But later, in June, is that it, June 6th? A. I don't remember.

Q. But he showed you pictures of the people, and you identified them as the people who brought the stuff up,

—1060—

isn't that correct? A. Yes.

Q. Now, do you remember Mr. Starkey saying to you in his office—and we are talking now of this second shipment, when the man and woman brought the shipment up from South America, does that fix it in your mind? A. Is that what you are talking about?

Q. Yes. A. Yes, the separate shipment.

Q. That was the time the man and the woman came up, and not the two women? A. Yes.

Q. The first time it was two women? A. Yes.

Q. Now, this is the man and woman? A. Yes.

Q. Have you got it clearly in your mind? A. Yes.

Q. Do you remember it very well? A. Yes.

Q. You remember Mr. Starkey said to you, "And you

were present when the man and woman who brought the next kilo in arrived at Colson's house?"

Do you remember him asking you that question? A.

—1061—

Was I present at the house?

Q. Yes. A. Yes.

Q. And you were, weren't you? A. What?

Q. You were present? A. Yes.

Q. Your answer was then, "I wasn't present when they arrived, but I was present shortly after they arrived."

Was that your answer?

Mr. Starkey: May I have the page, please?

Mr. Somers: That would be page 3 of your statement, Mr. Starkey. I am reading from your statement of April 25, page 3, at the bottom.

Q. You were not then actually present, were you? A. I didn't understand the statement, what you are saying. I was present with the people in the house. I was present with the people in Jesse Colson's house when they was unloading the kilo, was taking it out of the bag and giving it to Jesse and he was giving it to me.

Q. Now just please respond to my question, Mr. Ellis. Again we are speaking now of your testimony when you

—1062—

were telling Mr. Starkey everything in connection with these people and the shipment from South America.

Mr. Starkey said to you, "And you were present when the man and woman who brought the next kilo in arrived at Colson's house."

Do you remember him making that statement to you in that form? A. Maybe he did and maybe I refreshed my

mind and told him exactly like it was before maybe five minutes difference by being present, but I was there during the time that they were there. They took it out of the bag and gave it to Jesse and Jesse gave it to me, and I took it in a room that had two big jars—

Q. I am not talking about that, Schoolboy; I am talking about what happened when you came down to Colson's apartment, when you came up to 225th Street where Colson lived, in response to the call that you received at Carter's Bar, and you went up there. Now you tell us again what happened.

The Court: He has already told you that, and he told you several times, so let's get on to something else.

Q. Your answer to Mr. Starkey's question was as follows:

—1063—

"I wasn't present when they arrived, but I was present shortly after they arrived."

Do you remember telling him that? A. I don't remember.

Q. Well, you don't remember too much about that except what you testified to about the shipment being transshipped into jars, is that it? A. (No response.)

Q. You told us you were not afraid of Jesse; is that correct? A. That's correct.

Q. You were not physically afraid of him? A. No.

Q. You are not afraid of Jesse, physically afraid of him? A. No.

Q. Now, on the occasion of the third transaction that

you personally had to do with, that would be the first one with Tilly, the second with the $5,000 that you testified to in this court, and the third was the $12,000 or $14,000 shipment, the sale— A. No. The third was the time me and Duke delivered it.

Q. Well, then, we will call it the fourth See, I want you to know what I am talking about. A. I want to know

—1064—

too.

Q. It was about Colson, which would be the third with Colson but the fourth deal you testified about.

Now, you thought that there was $14,000 paid, didn't you? A. Yes.

Q. For that? A. Yes.

Q. Colson told you there was $12,000? A. He told me later.

Q. And he gave you your cut on the basis of $12,000, not $14,000? A. I don't know what dividends or what percentage he gave me, because I ordered so much and he had a little black book, so he just said, "Your cut is such and such," and I took it like that.

Q. You didn't care about the money one way or the other? A. Well, he was the boss. How can I do anything with that? He just gave me the figures.

Q. And you accepted them? A. Yes, I accepted them.

Q. Even though Duke had told you that he was being

—1065—

cheated by him, and you had had Tilly's complaint of short weight, you accepted Colson's figures without question?

Mr. Starkey: Objection as to form.

Q. Did you accept them?

The Court: You did accept them, did you?

A. Yes.

Q. Again, on the next shipment you accepted the figures without question? A. Yes. I always accepted his figures.

Q. Even though you were not afraid of him? A. No.

Q. You were willing to take whatever you could get out of this? A. Sure.

Q. You thought this business was better than the numbers racket when you went into it?

Mr. Starkey: Objection.

The Court: Sustained.

Q. Did you think that was a better way of making money than the numbers racket?

Mr. Starkey: Objection.

The Court: That is the second notice.

Mr. Somers: I beg the Court's pardon. Can't I

—1066—

talk to him about his prior occupation, your Honor?

The Court: That is your second notice. Proceed.

Q. When you were in—you told us yesterday that there were some numbers cases pending against you right now, didn't you? A. Yes.

Q. And where are they pending? A. I got one case in Centre Street.

Q. Special Sessions? A. No. General Sessions Court.

Q. General Sessions? A. Yes.

Q. Are you charged with a felony? A. Yes.

Q. Can you tell us the nature of it? A. It is 974-A. It came under New York Law September 1st that anyone having over a hundred bets it is a felong, a hundred bets. You can have a combination, unless you have—over a hundred bets, it is a felony.

Q. When were you arrested on that? A. September 1st of last year.

Q. Did you tell Mr. Murphy or Mr. Starkey anything about that?

—1067—

Mr. Starkey: I will object to this, your Honor. This is not even a conviction.

The Court: What is the purpose of this?

Mr. Somers: I don't want to say it in front of the jury.

The Court: You may.

Mr. Somers: That this man expects the government to help him over that.

Mr. Starkey: I will permit counsel to ask that question without objection.

By Mr. Somers:

Q. Did you mention that in any way to the federal people when they talked to you about this? A. They asked me about my conviction and arrest, and I told them at the time of my—when I was getting fingerprints.

Q. When you were being fingerprinted down at West Street? A. Yes.

Q. You told them that you had a felony charge pending against you in Centre Street? A. No.

Q. Well, what did you tell them about it? A. I told them I had a case in court.

Q. And in General Sessions? A. Yes.

—1068—

Q. And did you speak about that case to anybody in the federal government? A. I don't remember.

Q. You don't remember? A. No.

Q. Was there anything ever said about maybe you can get some help over there if you testify here? A. No.

Q. Did you have that in mind at all at any time? A. No.

Q. And you are not looking for any assistance here over there in General Sessions, is that right? A. No.

Mr. Starkey: Objection.

The Court: He said no.

Q. When you were being questioned by Starkey during these eight or nine times you told Mr. Carluccio yesterday—that would be the first one who cross-examined you—that Starkey was telling you a few things; didn't you say that? A. I don't remember.

Q. You don't remember that? A. No.

Q. Was Starkey telling you about this case when he was

—1069—

talking to you about it? Was he telling you what the government knew about it? A. I don't remember.

Q. You don't recall whether Starkey, in these eight or ten conversations, was telling you what the government had in this case on these various people? A. I don't know.

Q. Was Jesse Colson there at the same time you were being questioned? A. I don't remember.

Q. You don't remember that? A. I don't remember.

Q. Now, the traffic in narcotics, from your experience, is kept kind of dark, isn't it, by the peddlers?

Mr. Starkey: Objection.

Q. They don't go around openly telling people they are in the narcotic business, do they?

Mr. Starkey: Objection.

The Court: The witness has said many times that it is a secret business.

Q. It is a secret business.

Now you have testified that you repeatedly, on every occasion, if I am correct, saw and spoke to Leon at 136th Street between Seventh and Lenox Avenues? A. Yes, sir.

—1070—

Q. And that would be eight or ten times at least? A. Yes.

Q. And so that every time you wanted to get in touch with Leon Aiken you would go down to 136th Street and that is where you would find him? A. Yes.

Q. Did it ever enter your mind that this might be a dangerous thing, to go to the same place all the time to see a big-time narcotic peddler? Did you ever think of that? A. No.

Q. That never entered your mind? A. No.

Q. Now, you know that there is, from your own knowledge, a great deal of narcotic peddling going on in Harlem, don't you? A. (No response.)

Q. Do you know? A. No.

Q. You don't know that? A. No.

Q. Did you ever hear of marihuana? A. Yes.

—1071—

Q. Do you know what marihuana is? A. Yes.

Q. What does it look like?

Mr. Starkey: Objection.

The Court: I sustain the objection.

Q. You know that there is a good deal of marihuana peddling in Harlem, don't you? A. No.

Mr. Starkey: Objection.

Q. You don't know that?

The Court: He says no, he doesn't know that.

Q. You don't know that, do you?

The Court: He said no.

Q. Do you know whether there are a lot of bulls in Harlem from the Narcotic Squad, a lot of cops in Harlem from the Narcotic Squad?

Mr. Starkey: Objection.
The Court: Overruled.

A. I don't know.

Q. You don't know whether there are a lot of cops from the Narcotic Squad that patrol Harlem? A. (No response.)

Q. You don't know that? A. I don't know that, but I assume so, yes.

—1072—

Q. You assume so? A. Yes. There are a lot of precincts up there. There are a lot of precincts all over New York.

Q. And a lot of cops floating around? A. Yes.

Q. Plainclothesmen? A. I don't think you have to be a narcotic agent to arrest somebody with narcotics. I think any officer, to uphold the law, that sees a person with narcotics, can arrest him.

Q. I know that, but— A. I think I know it too.

Q. Pardon me? A. I don't know.

Q. You don't know about—you can't say of your own knowledge, whether— A. I think plainclothesmen—I don't think the average guy would know him, so how would I know there is a lot of plainclothesmen around? I think they are supposed to be kind of secret.

Q. That's right. Plainclothesmen are secret so you don't know when they will pop out and make an arrest; is that correct? A. (No response.)

—1073—

Q. Isn't that correct? A. (No response.)

Q. You never know when a plainclothesman will appear on the scene to make a bust?

Mr. Starkey: Objection.

The Court: You don't know that, do you?

The Witness: No, sir.

The Court: He doesn't know it.

Q. You have testified that you were always afraid that you might be arrested?

Mr. Starkey: Objection. Repetitious.

Q. You testified that you have, on a couple of occasions, made deliveries to a fellow by the name of Mersh; is that correct? A. Yes.

Q. And this fellow Mersh was designated to you, or pointed out to you by Aiken, this defendant; is that correct? A. (No response.)

Q. You don't know Mersh yourself? A. I have seen him a lot of times, yes.

Q. You have seen Mersh a lot of times? A. Yes.

Q. Where did you see him? A. 136th Street.

—1074—

Q. You mean 136th Street? A. That's what I said, 136th Street, between Seventh and Eighth.

Q. I beg your pardon? A. Between Lenox and Seventh.

Q. He frequents that neighborhood? He is there a lot? A. I see him in the skin joint a lot when I am around that way.

Q. He is readily available; he is around a good deal, is that it? A. Yes.

Q. Did you tell Mr. Starkey and Mr. Murphy about this man Mersh?

Mr. Starkey: Objection.

The Court: That is overruled.

A. Did I tell Mr. Starkey?

Q. Yes. Did you tell Mr. Starkey or Mr. Murphy, the agent? A. Mr. Starkey asked me about this delivery, and I told him that me and Jesse came from his house down to 136th Street, and we walked down the block, and Leon was in his car—

Q. No. We are talking about Mersh. A. Can I finish,

—1075—

please?

Q. No. Just tell me—

The Court: It will hurry this along if you will just answer yes or no or "I don't know" whenever possible.

The Witness: Did I tell Mr. Starkey about Mersh?

Q. Yes. A. Yes, I told him about this delivery that I gave to Mersh.

Q. And you told him that Mersh was well known in the area? You often saw him at 136th Street, and you often saw him in the skin joint? You told him that, didn't you? A. I told him that I seen Mersh around, and I have talked to Mersh around 136th Street.

Q. Did you tell it to Mr. Murphy too? A. I don't remember.

Q. On the occasion that you made this statement to Mr. Starkey did you tell him anything about Duke? A. I don't remember.

Q. What? A. I don't remember.

Q. Would you say that you didn't tell him anything about

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Duke? A. I don't remember.

Q. I don't hear you. A. I don't remember.

Q. You don't remember? A. I don't remember.

Q. But you say you told him everything you knew about the various people, didn't you? A. I told him what he asked me.

Q. You only told him in response to a question you would give him an answer, is that what you are telling us? A. People's names that he asked me about—

Q. He asked you— A. He asked me what kind of—did I know this person, and what kind of dealings that I was doing with this particular person.

I answered and told him and explained the dealings and the connections that I had with these people.

Q. And did he ask you—I think you were—your testimony yesterday, or the day before, was that amongst others he asked you if you knew Duke, didn't he? A. I don't remember.

Q. Wasn't it your testimony that he asked you did you

know a fellow by the name of Duke, amongst other names?

—1077—

A. I don't remember.

Q. And you don't remember now, one way or the other, whether you told him anything about Duke? A. He asked me what kind of dealings I had with Duke, and when was the last time I seen Duke, and I told him, yes.

Q. And you told him about your dealings with Duke? A. (No response.)

Q. Now, I show you this statement of April 25 of Mr. Starkey's and will you tell me whether anywheres in that statement you see any reference to Duke?

Mr. Starkey: Objection, your Honor. The statement is in evidence. It speaks for itself.

The Court: I sustain the objection. The statement speaks for itself.

Mr. Somers: I beg your Honor's pardon, but can't I—

The Court: I said the statement speaks for itself.

Mr. Somers: Exception.

Mr. Starkey: I will stipulate, however, your Honor, that there is no question or answer about Duke in the statement, if that will help Mr. Somers.

—1078—

Mr. Somers: Thank you, Mr. Starkey.

The Court: All right, proceed.

Mr. Somers: The statement speaks for itself.

By Mr. Somers:

Q. At the time Mr. Colson, Jesse, asked you to use your godmother's telephone because his phone was tapped, were you living with your godmother? A. At that time?

Q. Yes. A. No.

Q. You were not? A. No.

Q. Did you ever see the telephone bill? A. Did I ever see the telephone bill?

Q. Yes. Your godmother's telephone bill? A. Yes.

Q. And that bill showed a call to Chile? A. I don't remember.

Q. You don't remember that? A. I don't remember.

Q. And you said that these reports that you were going to get from Colson on the arrival of the shipments was a telephone call whereby he was going to say to you, "How are you?" And then that was the signal for you to

—1079—

go up to his house, something like that; is that correct? A. Yes.

Q. At this time in 1958 you were actually working in this cleaning and dyeing store, weren't you? A. It actually wasn't a job for me. I would just go in any time I get ready and help around the store, and come out. I go in and walk out when I get ready. It wasn't actually a job for me. I was just—

Q. It wasn't actually a job then? It wasn't actually a job then? A. No.

Q. You told us that all the records of the store had been destroyed? A. Yes.

Q. Is that right? A. Yes.

Q. And was there a telephone there? A. No.

Q. There was no phone in that store? A. No.

Q. And how far was that store from Carter's Bar? A. The next block, about half way of the block.

Q. You spent most of your time in Carter's Bar, I take it?

—1080—

A. Around there frequently, yes. Every day just about

approximately the biggest portion of the day was around in that neighborhood.

Q. Now, I want to ask you just one or two questions, Schoolboy, and we will be through, about this fellow Tilly. Tilly, of course, is a man, isn't he? A. Yes.

Q. A white man? A. No. He is a colored man.

Q. A colored man? A. Yes.

Q. Well known in Harlem? A. Well, I would say fair.

Q. Have you often seen him? A. Yes.

Q. Do you know where he is now? A. No.

Q. When was the last time you saw him? A. I don't remember.

Q. You don't remember? A. No.

Q. Did you tell Mr. Starkey about Tilly? A. I told Mr. Starkey about how that I had connections with Tilly. Yes, I told him that.

—1081—

Q. You told him about Tilly? A. Yes.

Q. And you also told him where this connection with Tilly took place, the house on 94th Street, I think you said? A. (No response.)

Q. That is right, isn't it? A. Me and Tilly, we left the Woodside Hotel, and we went to 225th Street, I made a call to Jesse, about the cocaine—Tilly wanted to go with me.

The Court: Ask him a specific question.

Q. This transaction where Tilly received this stuff and complained about the quantity, or at least Mr. Aiken did, the first time you saw Aiken was on 94th Street, you say? A. No.

Q. Well, where was it? A. It was on 141st Street between Seventh and Eighth.

Q. When you went up there there was a lady there? A. A lady opened the door.

Q. Do you know who that lady was? A. No.

—1082—

Q. No idea? A. No.

Q. That wasn't Sylvia Ferris? A. No.

Q. Did you ever see that lady again? A. No.

Q. That lady was present when Aiken came in, or had she left? A. I don't remember.

Q. You don't remember? A. No.

Q. But Tilly was there, and Aiken was there, and you were there? A. Yes.

Q. Now, was Tilly a narcotic peddler? I am not sure about Tilly. Will you tell me what his business was? What was Tilly's business?

Mr. Starkey: Objection, your Honor. I don't think there is any foundation for asking this witness that question.

The Court: Do you know what his business was?

The Witness: No.

The Court: He doesn't know.

—1083—

Q. How did you come to meet Tilly? A. I seen him around the block every day.

Q. And how did it come about that you did this transaction with Tilly? A. He asked me, he told me that he seen me ride around with the man bringing in all the good cocaine, and asked me could I get him some, and I told him I would see what I could do for him.

Q. Did you think Tilly was a user? A. I didn't know what he was.

Q. Did you have any idea whether he was a user or a peddler? A. No.

Q. You didn't think that at all? A. No.

Q. Would, normally, a user buy $300 worth at a clip? A. I wouldn't know.

Q. You wouldn't know that? A. No.

Q. Now—at any rate, continue. Tilly said he saw you running around with Colson, and he knew Colsen was a big operator. Now go on from there. A. He knew that Colson was a what?

—1084—

Q. Well, Colson was in the narcotics traffic. A. He told me, he said, "Man, you're riding around with the man bringing in all the good cocaine." He said, "Why don't you get some for me?" or something like that, or "Why don't you pick up some for me?" or something like that.

And I told him I would let him know, you know.

Q. And then you got $300 from Tilly? A. Yes. Later on he asked me could I get some coke.

I told him I would see about it.

Q. Go ahead. A. And then he told me to meet him at the Woodside. I met him at the Woodside and we was talking, and he said he wants some coke.

I said, "Okay, I'll see what I can do."

And he wanted to go with me, and I said, "The man ain't going to trust nobody but me because he don't want nobody around him, because one of his friends got stuck up in the business, and he's not going to trust nobody."

Q. You told that to Tilly? A. Yes.

—1085—

Q. You told that to him? A. Yes. He said one of his friends got stuck up in the business, and he is not going to trust nobody but me to the stash or around him, and nobody is going to get near him.

Q. And Tilly gave you the money? A. Tilly demanded

to go with me, and I told him I would take him part of the way with me.

Q. Never mind that. We have been through that. Tilly gave you the money, didn't he? A. I told Tilly that I would take him part of the way with me—

Q. Just a minute. Did you get any money from Tilly? A. Yes.

Q. How much? A. $300.

Q. And what did you deliver for that? A. What?

Q. What did you deliver for $300? A. I don't know exactly how much it was.

Q. And this subsequently was measured in Tilly's apartment, or someplace where Tilly brought you; is that correct? A. Yes.

—1086—

Q. And then Aiken came in? A. Aiken was doing the measuring.

Q. But he wasn't there when you got there, was he? A. No.

Q. He came in later? A. Yes.

Q. And you were there, weren't you? A. Yes.

Q. Well, did Aiken ask Tilly who you were? A. No. He came in and spoke to me.

Q. Aiken came in and spoke to you? A. Yes.

Q. What did he say to you? A. "Hi."

Q. Just "Hi"? A. Yes.

Q. And then just measured out the cocaine? A. No. He asked Tilly, "Did you get the package?"

And Tilly told him, "Yes."

And he gave it to Leon, and Leon measured it out.

Q. Well, did you understand by that conversation that Aiken knew that you were the man that supplied Tilly with the cocaine? A. I don't know.

—1087—

Q. Did it strike you strange that Tilly would let his big man, Aiken, meet with you, who were a supplier?

Mr. Starkey: Objection.

Q. Did that enter your mind?

Mr. Starkey: Objection.
The Court: Overruled.

Q. Now, Tilly is a narcotic peddler. Let me explain this clearly to you.

You are a supplier. Aiken comes in and Tilly introduces you, you say, and he says, "Hi". Is that what happened? A. Tilly didn't introduce me. Leon came in and he said, "Hi."

Me and Leon had been speaking for a few years, "Hello. How are you doing?" or something like that.

Q. Now, you have known Leon for a few years—

Mr. Starkey: Objection to that form, your Honor.
The Court: I sustain the objection. He has testified to this several times.

Q. And in your presence Leon measured out this cocaine? A. Yes.

—1088—

Q. Didn't ask what you were doing there at all? A. No.

Mr. Somers: That is all I have of this witness.
The Court: Any redirect?
Mr. Starkey: Yes, your Honor.

I will first ask that this complaint be marked for identification, your Honor, as a government exhibit.

(Marked Government's Exhibit 24 for identification.)

The Court: Mr. Starkey, please don't take this witness over this whole thing again.

Mr. Starkey: No, I won't, your Honor. I just want to offer the complaint first.

(Government's Exhibit 24 for identification received in evidence.)

Mr. Starkey: That is a copy; that is not the original, but all counsel are agreed that it is an accurate copy.

Redirect Examination by Mr. Starkey:

Q. Now, I believe it was Mr. Pogoda who asked you about being shown pictures of the defendants in this case, and being given their names at the time you were shown the pictures, Mr. Ellis. A. Yes.

—1089—

Q. Did you know the names of these individuals before you were shown the pictures? A. No, but the real names I didn't know. I knew the nicknames.

Q. You knew some names? A. Some names, yes.

Q. Now, Mr. Pogoda also asked you concerning the interviews in my office when you said that Jesse Colson was there, and you talked with Jesse about the facts of the case, and he refreshed your recollection and you refreshed his? A. Yes.

Q. Can you recall any of the things about which Jesse refreshed your recollection? A. It was about the last de-

livery of the kilo, and he told me that he had a jar, and I made him remember that I took the jar out of the car, and he told me to stand across the street in front of the Harlem Hospital and walk back, and he was up the block, and he wanted to see could he see Leon, and when he give me the signal to come across with the jar, I should, and when he gave me the signal I come across and gave him the jar, and he gave the jar to Leon.

Q. Did he refresh your recollection about anything else?

—1090—

A. I don't remember.

Q. Do you recall that you talked about the amount which was paid? A. Yes. I told him it was $14,000, and he told me it was twelve.

Q. Do you recall refreshing his recollection about anything? A. I don't remember.

Q. Do you recall any conversation about the 84th Street apartment? A. Yes.

Mr. Pogoda: This is the first time I hear 84th Street. Until now I have been hearing 94th Street from this witness.

Mr. Starkey: I think counsel opened the door on this question, your Honor. I asked the witness if he refreshed Colson's recollection about anything, and I now would like to put the question again.

Q. Do you recall—

Mr. Pogoda: My objection is, if the Court pleases, that this witness never said 84th Street. He has always used 94th Street.

Mr. Starkey now, for the first time, uses a different street.

—1091—

The Court: Is this a different place?

Mr. Starkey: Yes, your Honor.

The Court: Than you brought out on your direct? Is this a different place than was covered by your direct?

Mr. Starkey: Yes, your Honor.

Mr. Pogoda: Then I object to it, if the Court please, as improper redirect examination.

Mr. Starkey: This question relates to Mr. Pogoda's question as to "You refreshed his recollection and he refreshed yours" and I asked what it was that he refreshed "his recollection" about.

Mr. Carluccio: I object on the ground that it is completely leading and putting words into his mouth.

The Court: I sustain the objection. It is not really rebuttal. In other words, I am going to restrict you, on your rebuttal, and I am going to restrict any further recross. Let us proceed.

By Mr. Starkey:

Q. You testified that you always looked for Leon on 136th Street? A. Yes.

Q. Did you ever see him in any of the buildings on 136th Street?

Mr. Somers: I will object to that, your Honor.

—1091a—

None of that at all on direct. He met him in the street all the time. This is entirely new testimony he is attempting to elicit.

The Court: I will overrule that objection. I think he did testify with reference to other places.

Answer the question.

A. Yes. In this restaurant on 136th Street.

—1092—

Q. Whose restaurant? A. Leon's. I thought it was Leon's Restaurant.

Q. Do you recall Mr. Pogoda asking you whether Leon had given you $5000 on short acquaintanceship with you?

Mr. Carluccio: I move to strike that testimony about Leon's Restaurant. I think your Honor called to our attention that there was some testimony as to the building. I don't remember, up until now, any testimony as to Leon owning a restaurant, or having a restaurant. That is my recollection.

The Court: I will overrule the objection. It is already in, so let's proceed.

Q. Did you have any conversation with Leon about the $5000 and him not knowing you so well? A. He told me that he is not going to trust his money no more like this. He said he is going—he is trusting this time but nobody takes his money and leaves town because he can stay in this town and a few other towns, and he told me he trusts me with the money and any future deals are going to be, "Bring the coke, here is the money," and they are going to be like that.

Q. There was talk about tasting the cocaine on your

—1093—

cross-examination; do you recall that? A. Yes.

Q. How does it taste? A. It's got a bitterish taste.

Q. Mr. Pogoda asked you if you knew that Duke was Jesse's partner before the conversation with him when you got back from Chicago.

Leon Ellis—for Government—Redirect

Mr. Pogoda: If the Court please, I object to the form of the question. Each of these questions repeats my name. I don't think that form is a part of this case. The question should be asked without referring to any particular counsel.

The Court: I sustain the objection. Just ask the questions.

Q. How did you know, before that conversation with Duke when you returned from Chicago, that he was Jesse's partner? A. Jesse told me.

Q. You testified you were in protective custody? A. Yes.

Q. Whose decision was that? Whose choice was that?

Mr. Somers: I will object to that, your Honor.

—1094—

The Court: I sustain the objection. It doesn't matter. Let's proceed.

Q. Have you been free to go where you want and do what you want during that period? A. When I was under protective custody?

Q. Yes. A. Yes.

Mr. Somers: Your Honor, if I may state, the relevance of whose choice it is, your Honor, I think defense counsel cross-examined in that area tending to show or attempting to show that during this period he has been intimidated in some way by the Government, and I would ask the question on that basis, as to whose choice it was that he had this protection.

The Court: Well, I think it is irrelevant. He has

the protection. He can go where he wants to, and so on. Let's get on with something else.

Q. You also testified that Jesse Colson threatened you. A. Yes.

Q. When did this take place? A. I don't know exactly but about three or four weeks ago.

Q. What was it that he said at that time? A. I was

—1095—

sitting in the bar with a friend of mine, and he came in and said, "You were on the street talking about me. I should punch you in the mouth," or something like that.

And I told him, "Go ahead." I said, "Go ahead and kill me now," you know.

He said, "I am not going to kill you; I am going to let the syndicate take care of you."

And I told him to take a walk or do something.

And he came out and jumped in his car and speeded away.

Q. Did you ever have any conversation with him about your getting out of town? A. Yes.

Mr. Somers: I object to that as distinctly leading, your Honor. It is distinctly leading.

Mr. Starkey: I wouldn't know how else to ask it, your Honor.

Mr. Somers: That is distinctly leading. Counsel can ask him what other conversation he might have had, but not put it like that.

The Court: What other conversation did you have with Colson?

The Witness: He told me he thought it would be

—1096—

best for me to leave town.

And I told him, I said, "Yes, I may leave."

He said, "Because the people is looking for you every day and you got to go and hide."

And I told him, I said, "Yes, I ain't got no money."

And he told me that he was going to see Leon and see could he borrow some money for me to leave town.

And as I thought it over, I said, "I can't leave town." I said, "I got a case downtown in court."

Q. Did there come a time when you talked to him about it again? A. Yes.

Q. How much later? A. It was three or four days later he came by the house about 9 o'clock that night, and he told me that he was going to send his old lady over to bring Leon down to her house to see about borrowing some money.

Mr. Somers: I cannot hear this man with his hand in front of his mouth.

A. (Continuing) He came to my house and he told me that

he was going to send his old lady by the bar to get Leon and bring him by her house to see about borrowing some money for me to leave town.

I told him, "Okay."

He came back about 3.30 that morning, and he told me that Leon was down his house, you know, and he wanted me to get dressed, and after I got dressed he took me on down there.

I went upstairs, and Leon was there, and he said, "I hear you want to leave town."

I says, "Yes. I said that, but I can't leave town. I got kids, I got a case down in the court pending," and I said, "If I leave town I will be running for the rest of my life."

He says, "Yes, that's right."

So he gave me $50 and told me to just stay close, stay off the street, "Don't be on the street too much."

Q. Don't be on the street too much? A. Yes.

Q. Finally, after each of these deliveries, to Leon or to Mersh, did you ever have any conversation about the specific delivery after the delivery? A. No.

—1098—

Mr. Starkey: One moment, please, your Honor.

(A pause.)

Q. On the date you were brought into my office after your arrest, Mr. Ellis, do you recall hearing the date February 12 on that date, February 12, 1958? A. Yes, yes. I think so. I'm not sure.

Q. You are not sure whether you did or not? A. No, I am not sure.

Mr. Starkey: No further questions.

Mr. Somers: May I interrogate him now, your Honor?

The Court: Yes.

Recross Examination by Mr. Somers:

Q. Schoolboy, you say that this conversation where this girl—

Mr. Starkey: I am sorry. I hate to interrupt Mr. Somers but I did miss a page of my notes, or a half

page, your Honor, and I would ask the Court's leave to continue my redirect examination.

The Court: All right.

Mr. Somers: Certainly.

Redirect Examination by Mr. Starkey (Continued):

Q. Did you testify before the grand jury, Mr. Ellis? A.

—1099—

No.

Mr. Pogoda: May I at this time note for the record, if the Court pleases, that Mr. Starkey is well aware that this defendant, this witness was arrested after the indictment in this case had been found, and the question was intended, in my opinion, to inflame the jury against these defendants, that this witness was not a witness before the grand jury.

Mr. Starkey: Your Honor, the question is—

Mr. Pogoda: And I submit to the Court that this is unfair conduct on the part of a prosecutor of this court.

The Court: Wait just a minute, please. That is precisely the same question that you asked the witness.

Mr. Pogoda: No, that is not so, if the Court please. It was stipulated in the record now that the indictment was found in March. The witness, by everything, indicated that he was arrested in April, so that he could not have testified before the grand jury, and at this time I now move for a mistrial.

The Court: That is denied. Let's proceed.

Mr. Starkey: Your Honor, I would merely like to

—1100—

put on the record the reason for the question. Mr. Somers' questions about the description of John Doe Leon in the indictment—

The Court: Let's proceed.

Q. At the time of your arrest, or at any time thereafter, did any Government employee ever say anything to you about being the Leon in the indictment?

Mr. Somers: I will object to that, your Honor. Would you repeat that, please?

(Question read.)

Mr. Somers: I will withdraw the question.

A. They told me specifically that I wasn't the Leon.

Q. That you were not? A. That I was not the Leon.

Q. You were asked if you knew where Tillie was now; do you have any idea? Have you heard where Tillie is? A. No.

Q. Do you know whether or not Tillie and Mersh are friends of Leon's? A. I don't know. I thought they was kind of close.

—1101—

Mr. Starkey: No further questions.

Recross Examination by Mr. Somers:

Q. Mr. Ellis, you say that the Government specifically told you that you were not the Leon mentioned in this indictment. When did they tell you that? A. This was when I was arrested.

Q. Did they talk to you about this indictment at that time? A. No.

Q. Then what did you mean by telling us, in response to Mr. Starkey's question, that they told you specifically that you were not the Leon? Did anybody ask you whether you were the Leon? A: No. When I gave my name, I think Agent Murphy said, "We are going to have to call this case the Leon case because there are so many Leons in this case."

Q. That is all that was said? A. Yes.

Q. Nobody said, "You are not the Leon that is mentioned in the indictment"? A. No.

Q. Of course not. You were not even told there was an indictment; you were arrested on this charge of six ounces

in the February 12 situation? A. I was arrested for violating the Narcotic Act.

Q. Now, you just said a few minutes ago that a few weeks ago this conversation took place at a bar or at somebody's house—I am not sure. A. Jesse's girl friend's house.

Q. Jesse's girl friend's house? A. Yes.

Q. And that Leon and you talked about something, and he gave you 50; is that your memory? A. You want to know what we talked about?

Q. You talked about something; you had a conversation during the course of which you got $50? A. I was speaking about—

The Court: Just a minute. He gave you $50 at this time?

The Witness: Yes.

The Court: All right. Take the witness.

Q. When was this exactly? A. I don't know exactly. It was in February or March.

Q. Was that before you went down to Mr. Starkey's office? A. I didn't go to Mr. Starkey. I was arrested.

—1103—

Q. Well, you didn't volunteer to go to Mr. Starkey; is that what you are saying? A. No.

Q. You were arrested and brought to Mr. Starkey? A. I was arrested and brought to West Street.

Q. And since then did you see Leon, since that time? A. Since what time?

Q. Since the time you were arrested. A. I saw him once previous, yes.

Q. You saw him in the street? A. No.

Q. What's that? A. No.

Q. Well, I thought you said you did see him. Where did you see him? A. I saw him in the Purple Bar.

Q. I asked you about that earlier. Did he offer you any money then? A. We didn't talk then.

Q. You didn't talk? A. No.

Q. Now, Jesse and you had been in Starkey's office together repeatedly, isn't that true? A. No.

—1104—

Q. Haven't you told us several times that you and Jesse were in Mr. Starkey's office when you were questioned, or when Jesse was being questioned? Didn't you tell us that time and again? A. That was after I was arrested.

Q. Yes. I am speaking about after you were arrested. A. But you are telling me about something else before.

Q. No. At any time you and Jesse were in Mr. Starkey's office and Jesse was refreshing your recollection as to certain things, didn't you just testify to that? A. Yes.

Q. Jesse was out in the street, wasn't he? A. Yes.

Q. Did Jesse know that you had been talking to Mr. Starkey? A. No.

Q. Well, didn't you know? He was right there in the office. Why do you think you were there?

Mr. Starkey: I will ask that he fix a time.

Mr. Somers: I will.

—1105—

Q. The times you and Jesse were in Mr. Starkey's office —I am speaking of those—Jesse knew that you spoke to Starkey about these matters, didn't he? A. No.

Q. Well, didn't you say again and again that Jesse refreshed your recollection, and you said about taking the jars out, and who had brought them out, you were talking about the coke? A. This was me and Jesse. When Jesse was in Mr. Starkey's room I wasn't in there. Only a couple of occasions, and we wasn't saying anything.

Q. You mean you weren't saying anything when you and Jesse were together? A. Ask that again, please.

Q. Did you ever say anything to Mr. Starkey while Jesse was present? A. Yes.

Q. About this case? A. Not to Mr. Starkey. Me and Jesse was talking about it.

Q. Well, Jesse was talking about this case to Mr. Starkey, and you were present, is that it? A. Me and Jesse was talking about the case.

Q. You and Jesse were talking about the case? A. Yes.

—1106—

Q. So that Jesse at all times knew that you were telling Mr. Starkey all about these transactions? A. He didn't know anything.

The Court: When you and Jesse were talking about this case and he was refreshing your recollection, was Mr. Starkey present and listening to you talk?

The Witness: Yes.

The Court: All right.

Q. So Jesse knew that you were telling Mr. Starkey all about Jesse's transactions with various defendants? A. Yes.

Q. He knew that? A. At that time, yes.

Q. And was it after that time that Jesse threatened you? A. No. It was before.

Q. Before? A. Yes.

Q. Jesse told you to leave town before or after? A. Before.

Q. And Jesse said to you that you were going to be

—1107—

arrested? A. Yes.

Q. Jesse told you you were going to be arrested? A. Yes.

Q. You expected to be arrested? A. No.

Q. Except that Jesse told you you would be arrested? A. (No response.)

Q. Now, Jesse had been arrested at that time, hadn't he? A. Yes.

Q. And Jesse knew that he was being charged with a violation of the narcotics laws when he told you to leave town, is that right? A. I guess so.

Q. Did you ask Jesse, "Why don't you leave town"? A. No.

Q. Did you say that to Jesse? A. No.

Q. You didn't say that to Jesse? A. No.

Q. You knew Jesse had money? A. I didn't know he had money.

—1108—

Q. You didn't know he had money? A. No.

Q. But you didn't have money to leave town; is that what you are saying? A. Yes.

Q. And that is the reason you didn't leave town, because you didn't have money? A. Well, I wasn't—I don't think I would have left town anyway. I don't think so.

Q. And then later you say that you got $50 from Leon? A. Yes.

Q. Now, when you told Leon that you had a wife and children, and you didn't want to leave town, Leon didn't urge you and say, "Well, we will take care of your wife and children, leave town," did he? A. No.

Q. You said, "Yes, that's right," and he gave you $50? A. Yes.

Q. So that Leon at that time knew that Jesse had been arrested and that you expected to be arrested?

Mr. Starkey: I will object to what Leon knew, your Honor.

—1109—

The Court: Did you know whether Leon knew you would be arrested? Was there any way that you would know this?

The Witness: I don't know, sir.

Q. Let me ask you: Did it occur to you that Leon might think that you wanted to leave town because of something else?

Mr. Starkey: I will object to that, your Honor.

The Court: I will sustain the objection. You are trying to probe his mind now and you better ask him another question.

Q. Now listen to me, Schoolboy, you had been talking about leaving town. Jesse said, "I will get Leon down here so you can get some money because you said you didn't have money." Am I correct there? A. No, you are wrong. You are saying it wrong.

Q. Well, you say it right. A. Jesse told me that I better leave town because they are liable to pick me up any minute.

Q. For what reason? A. For violating the Narcotic Act.

Q. With Jesse? A. With everybody.

—1110—

Q. With everybody? A. Yes.

Q. Yes. Including Leon Aiken? A. Including everybody that I deal with.

Q. Jesse had been arrested by this time? A. Yes, sure.

Q. And you knew this proceeding was pending at this time? You knew this proceeding was pending against Jesse certainly? A. Against Jesse?

Q. Against Jesse, yes. Jesse had been arrested? A. Yes.

Q. Did you know whether Leon Aiken had been arrested at this time? A. I didn't know.

Q. You didn't know one way or the other? A. No.

Q. And then you say you didn't want to leave town because you didn't have the money to take care of your needs, is that about it? A. (No response.)

Q. Did you say that? A. I said that I wasn't going to leave town because I had a case down in court pending

—1111—

against me, and I had kids here, and if I leave town I will be running the rest of my life, and that's the reason I wasn't going to leave town.

Q. So that you weren't going to leave town under any circumstances? A. No.

Q. But yet you permitted Jesse to arrange a meet with Leon at Jesse's girl friend's house, am I right? A. Yes.

Q. Why did you do that if you weren't going to leave town anyway? A. I permitted Jesse to make arrangements?

Q. Yes. Didn't you say that? A. Jesse came by my house and told me that he was going to send this old lady over to the bar and bring Leon down to his girl friend's house that night.

Q. For what purpose? A. For what purpose?

Q. Yes. A. To give me some money to leave town.

Q. But you had said you wouldn't leave town under any circumstances. A. In other words, I didn't tell him that.

—1112—

Q. You didn't tell that to Jesse? A. No.

Q. Oh, you didn't tell that to Jesse. A. No.

Q. You led Jesse to believe that you would listen to any proposition that might give you some money? A. Yes, sure.

Q. Sure? A. Yes.

Q. Sure, sure. But you had no intention of taking the money and leaving town; you just wanted to get the money, is that correct? A. No, I wasn't going to accept the money under no circumstances.

Q. You weren't going to accept the money under no

circumstances. Okay. But you did accept $50, didn't you? A. Yes.

Q. You didn't return that to Aiken, did you? A. I didn't return what?

Q. You didn't return the $50 to Aiken, did you? A. No.

Q. You took the money? A. Yes.

—1113—

Q. What was the conversation, did you say, when Aiken and you and Jesse met at Jesse's girl friend's house? A. He asked me that he heard I wanted to leave town.

I said, "Yes, me and Jesse was talking about that but I said I can't leave town. I got a case pending against me downtown, and if I leave town now I will be running for the rest of my life."

Q. Was there any discussion about what you were leaving for or running from? A. I think it was understood what I was running from.

Q. That you were running from this narcotic conspiracy indictment, isn't that right? Isn't that what was understood? A. I just got through telling you I have a case over in the court and—

Q. Do you think it was Jesse's concern, and did you think at this time that it was Jesse's concern or Aiken's concern about this numbers case in General Sessions?

Mr. Starkey: No objection.

—1114—

Q. Did you think they were concerned about that?

Mr. Starkey: Objection.

The Court: I think it would be easier for him to answer it. They were not concerned about your numbers case, were they?

The Witness: No, sir.

Q. So they were concerned about the narcotics conspiracy, is that right? A. I don't know.

Q. You don't know? A. I don't know.

Q. And Aiken was concerned about his possible involvement in that narcotic conspiracy, right? A. I don't know.

Q. You don't know? A. (No response.)

Q. But Aiken was just going to give you money just like that to leave town? A. I don't know.

Q. You don't know? A. (No response.)

Mr. Somers: That's it.

The Court: We will recess now, with the same instructions, until 2.15 p.m.

—1115—

Mr. Pogoda: I did want to make a point, if the Court pleases, that I have been directed to appear before a judge in Brooklyn during my luncheon recess, and I wondered if your Honor wouldn't extend it another five or ten minutes. I will forego lunch and take a taxi back and forth.

The Court: All right, sir.

We will make it 2.25. Would that be sufficient?

Mr. Pogoda: Thank you, your Honor.

The Court: 2.25 p.m. with the same instructions.

(Recess to 2.25 p.m.)

—1116—

AFTERNOON SESSION

(Jury in box.)

LEON ELLIS resumed.

Recross Examination by Mr. Carluccio:

Q. Mr. Ellis, do you mind if I call you Leon? A. No.

Q. Leon, you say that Jesse threatened you three or four weeks ago? A. Yes.

Q. And you were afraid of Jesse at that time? A. No.

Q. You stated that you were afraid of getting into a great deal of trouble.

Mr. Starkey: Your Honor, I object. I don't think this is proper recross examination at this time.

The Court: I think he has testified that he was afraid of getting into a lot of trouble, so let's get on.

Q. You maintain that you were not afraid of Jesse?

Mr. Starkey: Objection.

The Court: I don't believe that Mr. Starkey went into that on his redirect, did he?

Mr. Carluccio: Yes, he did, your Honor. He said

—1117—

that Jesse threatened him three or four times. "I ought to punch you in the mouth but I will let the syndicate take care of you."

The Court: All right, go ahead.

Read the question.

(Question read.)

The Court: He has answered that several times. He said no, he was not afraid of Jesse, and he isn't afraid of Jesse, as I understand his testimony.

Q. Do you know where Jesse is today?

Mr. Starkey: Objection.

The Court: Well, I assume he knows but I don't think it concerns us.

Mr. Starkey: I withdraw the objection.

The Court: Do you know?

The Witness: Yes.

Q. Leon, there was a question asked about whether or not you were the Leon in the indictment, and the first time I heard your answer, the answer from you, it sounded like you were the Leon named in the indictment, and then Mr. Starkey said "were not," and you said, "I was not the Leon in the indictment."

Did I recall that correctly? A. I don't know.

—1118—

Q. You don't remember? A. Not exactly.

Q. Well, do you have trouble speaking sometimes?

Mr. Starkey: Objection.

A. No.

The Court: He answered the question. He said no.

Q. You don't have trouble speaking sometimes, do you? A. No.

Q. You don't have any speech impediment? A. I don't think so.

Q. Did you ever have a speech impediment?

Mr. Starkey: Objection.

The Court: You never did, did you?

The Witness: No, sir.

The Court: All right, let's proceed.

Q. If you are not afraid of Jesse, as you state, are you afraid of what the Government might do to you?

Mr. Starkey: Objection.

Mr. Carluccio: I have a right to ask that question.

Mr. Starkey: It is not proper recross examination, your Honor.

—1119—

The Court: I think we have been into it many times.

Mr. Carluccio: It is my last question.

The Court: Can you answer that?

The Witness: Yes.

The Court: Answer it.

A. Jesse told me—I am not afraid of Jesse—that after this he had been threatened, his wife was—

The Court: Wait just a minute, please. That wasn't the question. Read the question.

(Question read.)

A. No.

Mr. Pogoda: Just one question.

Recross Examination by Mr. Pogoda:

Q. Mr. Ellis, after you left court yesterday were you in the custody of the United States Customs agent? A. Yes.

Q. Which agent? A. I don't know exactly what his name is. I can't remember his name now.

Q. When you left court here did you go directly out of the building or did you go to Mr. Starkey's office? A. I

—1120—

went to Mr. Starkey's office.

Q. How long did you spend in Mr. Starkey's office? A. Until the agent came over and picked me up.

Q. How long would that be? A. I don't know exactly.

Q. One hour or more? A. I don't know exactly.

Q. Well, while you were in Mr. Starkey's office did you talk to Mr. Starkey? A. Yes.

Q. Did you discuss your testimony with him? A. No.

Q. Did any agent discuss your testimony here in court? A. No.

Q. So that from the time you left the court yesterday until you returned this morning you had no conversations with anyone connected with the Government about your testimony in this case? A. Mr. Starkey asked me a few questions, yes.

Q. What questions did he ask you? A. He asked me when was the last time that me and Colson and Leon was present.

—1121—

Q. What did you tell him? A. I told him that me and Leon and Jesse was present down at his girl friend's house, Jesse's girl friend's house.

Q. What was the second question he asked you? A. "When was the time that Jesse threatened you?"

Q. Those are the only two questions? A. He asked me what was the first time that I saw Leon's picture.

Q. What did you say to him? A. I told him, yes, I remember the first time, but I don't know exactly what date it was.

Q. It was only two weeks ago, wasn't it? A. I don't remember.

Q. Do you recall that it was on June 6 at the time the girl stenographer was in Mr. Starkey's office? A. I don't remember.

Q. You had been over this story time and time again with Mr. Starkey, isn't that so? A. No.

Q. Did you ever discuss with Mr. Starkey that Jesse threatened you? A. I don't think so. I think I told Agent Barry that.

—1122—

Q. Agent who? A. Barry. Mr. Murphy.

Q. Now, when you came to court this morning did you review your testimony with either Mr. Starkey or any other agent for the Government? A. No.

Q. During the lunch hour did you discuss anything? A. No.

Q. So that the last time you discussed your testimony with anyone connected with the Government was after you left court yesterday afternoon? A. No.

Q. Is it yes or no? A. No.

Q. Well, I don't understand the answer. A. Mr. Starkey was asking me when the last time that me and Jesse and Leon was in conversation, and I don't think that was discussed. He asked me a question and I answered him.

Q. Since then nothing was said by you or by Mr. Starkey to each other, or any agent connected with this case about your testimony? A. Mr. Starkey asked me the first time that I saw Leon's picture.

Q. Yes. Well, that was yesterday, I mean since yester-

—1123—

day you did not discuss the case today? A. No.

Q. Or last night? A. No.

Mr. Pogoda: That's all.

Mr. Somers: One question.

The Court: All right.

Recross Examination by Mr. Somers:

Q. Leon, you said that for the last 15 or 16 days you been in protective custody? A. Yes.

Q. And you also had an agent with you in the last 15 or 16 days? A. Yes, or close by.

Q. A federal agent? A. Yes.

Q. And that was shortly before this trial commenced, is that right? A. Well, it's about—

Q. This trial commenced last Tuesday. A. It's about 10 or 15 days.

Q. And you are in protective custody right now, I take it? A. Yes.

—1124—

Q. Now, you said that Mr. Starkey, for the first time, last night asked you when you and Jesse and Leon had been together the last time, or had spoken the last time, or did he say—forgive me—"When was the last time you and Jesse and Leon spoke together?" Is that what he

asked you last night? A. He asked me when was the last meeting that Leon and Jesse and me had.

Q. And you told him then for the first time about this meeting of the $50 situation that you told the jury about this morning? A. The last time?

Q. Yes. A. No, I don't think it was the first time. I think I told him before.

Q. You did tell him before? A. Yes.

Q. You told him about this business of Leon offering you some money, and you accepting it, $50? You told this to Mr. Starkey before last night; is that what I understand you to say? A. I didn't say that he offered me some money. I said he gave me $50.

Q. And you told that to Mr. Starkey during this eight

—1125—

or ten meeting period that you had between the 25th of April and the 6th of June of this year; is that right? A. I don't remember telling it to him because he asked me the last meeting that me and Jesse had, and I think Jesse Colson told him also.

Q. Jesse Colson also told him about the discussion about your leaving town and your refusal to leave town? A. No. I told him.

Q. You told that to Mr. Starkey? A. Yes.

Q. And you told us about it for the first time here in court, is that right, today? A. That was the first time I was asked about it.

Mr. Somers: That is all. Thank you very much.

The Court: Are we finished with the witness?

Mr. Starkey: No, your Honor. I have one small matter that I would like to cover.

Leon Ellis—for Government—Redirect
Finbarr J. Murphy—for Government—Direct

Redirect Examination by Mr. Starkey:

Q. Now, on recross, Mr. Ellis, you were asked whether or not this date, this June 6th date, when this statement was taken, was the first time you saw Leon's picture? A.

—1126—

No, I was not.

Q. Do you recall how long before that you had seen it? A. I don't know. Three weeks before then.

Mr. Starkey: No further questions.
The Court: Do you have any more questions?
Mr. Pogoda: No questions.
The Court: Step down, please.

(Witness excused.)

—1382—

New York, June 26, 1961,
10:30 o'clock a.m.

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—1385—

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FINBARR J. MURPHY, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Direct Examination by Mr. Starkey:

Q. What is your occupation, sir? A. I am a customs agent with the Treasury Department, Bureau of Customs.

Q. How long have you been so employed? A. Approximately four years.

Q. Are you the agent in charge of the investigation of this case? A. I am.

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—1427—

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Direct Examination by Mr. Starkey (Continued):

Q. Now, Agent Murphy, do you know Leon Ellis? A. Leon Ellis?

Q. Schoolboy. A. Yes, sir.

Q. Was it you who placed him under arrest on March 26, 1961? In April? A. Actually, he was placed under arrest by a Customs enforcement officer. I was nearby.

—1428—

Q. And were you in the courtroom when Schoolboy testified? A. I was.

Q. Do you recall questions being addressed to him as to whether or not he was told he was indicted in this case or not? A. I remember.

Q. Did you ever have such a conversation with him?

Mr. Somers: I will object to that. I think that Mr. Starkey is apparently going to impeach the testimony of his prior witness.

Mr. Starkey: Not at all, your Honor. Schoolboy testified that he could not remember.

Mr. Somers: Schoolboy here testified at great length to two days—

The Court: That is overruled.

Answer the question.

Q. Did you ever have a conversation with him as to whether or not he was named in this indictment? A. I did.

Q. When? A. Coming down the West Side Highway, after he was placed under arrest.

Q. And that was the end of April? A. Yes.

—1429—

Q. What did you say? A. I told him that he wasn't named in the indictment.

Mr. Somers: He was not named?

The Witness: Not a defendant in the indictment.

Mr. Somers: I am sorry.

A. (Continuing) He was not a defendant in this case.

Q. Do you know a man by the name of Leon Aiken? A. I do.

Q. Or Leonard Aiken, I should say. A. I do.

Q. Was it you who placed him under arrest? A. Yes. I executed a warrant on December 13th.

Q. On what? A. Not December. May 13, 1961.

Mr. Starkey: I ask that this document be marked as a government's exhibit for identification.

(Marked Government's Exhibit 33 for identification.)

Q. I show you Government's Exhibit 33 for identification and ask you if that is the warrant which you executed in taking Aiken into custody? A. Yes; it is.

—1430—

Mr. Starkey: I offer in evidence Government's Exhibit 33 for identification.

Q. Did there come a time thereafter when you saw the defendant Aiken and myself together? A. Yes, sir.

Q. Where was that? A. It was in your office in this building.

Q. Did you hear any conversation at that time? A. Yes; I did.

Q. Did you hear any conversation as to his identity, or concerning his identity? A. Yes.

Q. What did I say and what did he say? A. First you asked him his name. He gave you Leonard Royall Aiken. You asked him, "Are you known by any other names?" He said, "Yes. I am known as Leon."

Q. Was there any conversation that you recall about Schoolboy? A. Yes. You asked the defendant Aiken if he knew a Schoolboy, to which defendant Aiken stated that he knew a fellow by the name of Schoolboy, he knows him two or three years.

—1431—

(Government's Exhibit 33 for identification received in evidence.)

Q. Were you present at the arraignment of the defendant Aiken? A. Yes.

Q. What happened thereafter? A. After his arraignment?

Q. Yes. A. I brought defendant Aiken down to the U.S. marshal's office, approximately 1:30 or 2 o'clock. There were no marshals available to take him to West Street for safekeeping, so I brought him over, and I pulled up in front of the Federal House of Detention, and I turned to tell the defendant Aiken to get out, I was going to place him in the house, at which time I noticed the defendant Aiken was sweating profusely and had a nervous twitch on the side of his face.

Mr. Somers: I object to the characterization "nervous twitch", your Honor.

The Court: Suppose you describe what was said, leaving out the word "nervous." Describe how he looked.

A. (Continuing) The left side of his face was moving back and forth and jumping. I told him to get out, and defendant Aiken said, "Wait a minute."

—1432—

And I said, "Why?"

He says, "If you ever get any stuff"—

Mr. Somers: Your Honor, I object to that. This is a conversation in no way relevant to the eighth count of the indictment, which charges this defendant with conspiracy, and unless Mr. Starkey is going to limit this to such conversation or such declaration by the defendant Aiken as may be construed in furtherance of the conspiracy, I submit it is highly improper, highly prejudicial. The conspiracy was terminated back in 1958 in the fall. This is a conversation held in March of 1961.

Mr. Starkey: May.

Mr. Somers: May, 1961, long after the termination of the conspiracy. If this defendant were charged individually with a substantive count, I might recognize the value of that and the admissibility of it, but I submit, your Honor, to allow this conversation into the record is highly prejudicial, in no way in furtherance of the conspiracy and absolutely inadmissible.

Mr. Starkey: The government, of course,—

The Court: I think the government has filed a memorandum covering this particular evidence, and

the Court has had an opportunity to study the memo-

—1433—

randum and also the authorities, and it is the Court's view that the evidence is admissible only as to the defendant Aiken, and the jury is instructed that what the witness will testify to now is admissible only as to the defendant Aiken and not as to any other defendants on trial, and is in no way to give rise to any inference whatever as to any other defendants on trial, other, of course, than the defendant Aiken.

Mr. Somers: Your Honor, do you feel that this is under the eighth count of the indictment in furtherance of the conspiracy? On what ground, may I respectfully ask, has your Honor decided that it is admissible?

The Court: Well, sir, I don't want to give it to you in front of the jury, but I am in accord with the cases which the government cited in its memorandum and the principles which are outlined in those cases, not that it is connected with the conspiracy at all.

Mr. Somers: I see. It is not on that ground?

The Court: No. Nor does it refer to the conspiracy, nor does it relate to the conspiracy, but it is on the basis of the cases in the memorandum.

Mr. Somers: Thank you, Judge.

Mr. Carluccio: With all due deference to your Honor's ruling, for the record, I respectfully object

—1434—

on the ground that even though your Honor has cautiously instructed the jury, I feel that the strong and highly prejudicial sounds of those words will drown out all weaker sounds, and the probative

value that might be adduced with reference to the point that Mr. Starkey makes will not blot out the words in the jury's minds, and the jury will not be able to make this very fine distinction, and my client will be therefore prejudiced.

The Court: Let the objection be recorded, and it is overruled.

Proceed.

By Mr. Starkey:

Q. Will you proceed, Agent Murphy, with the conversation you were describing? A. Yes. The defendant Aiken stated to me that, "If you get any stuff you want to get rid of, call me."

And I said, "What?"

He said, "If you get any stuff you want to get rid of, call me. You can trust me."

I said to him, "I can trust you? Do you know who I am?"

He said, "Yes."

I said, "Well, as of last night I never even met you."

—1435—

He says, "Don't worry. You can trust me."

I said, "I don't work like that. If I am going to work with you, I've got to know who you are doing business with."

He said, "What do you mean?"

I said, "Well, I have a lot to lose here."

So I told him, "I've got to have references. Give me some people that I can check up." I said, "I got to have references of people that have done business with you before, before I go into anything with you."

And this conversation terminated, and I took him into the Federal House.

Finbarr J. Murphy—for Government—Cross

Q. Now, Agent Murphy, are you familiar with the vernacular and slang used in the New York area insofar as a reference to narcotics is concerned? A. I am.

Q. Do you know any of the words which are used among narcotic traffickers to designate narcotics? A. I do.

Q. Will you tell the Court and jury what such words are? A. Cocaine is "white stuff." They call it "C". "H" is "horse", heroin. "Reefer" is marihuana, "pot", "M".

Mr. Starkey: No further questions.

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—1450—

Cross Examination by Mr. Pogoda:

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—1472—

Q. Now, Agent Murphy, when for the first time did the name of the defendant Leon Aiken come to your attention? A. That came to my attention maybe May 9—the name of Leon Aiken, Leonard Aiken?

—1473—

Q. 1961? A. Yes.

Q. Had his name been mentioned at any time prior to May 9, 1961? A. His proper name?

Q. The name Leon? A. Oh, yes.

Q. By whom? A. By Jesse Colson. The name Leon, right.

Q. When did his name come up? When was that conversation? A. July '59.

Q. You were not interested at that time in the sale of narcotics. You were merely interested in the smuggling, the importation of narcotics; is not that true? A. The sale of narcotics always interests me, but we have a jurisdictional agreement between Bureau of Narcotics and our-

selves. We will handle the smuggling across the borders. They will handle inside the cities.

Q. Didn't you tell me, in response to the question about Leon Ellis, that your concern and your investigation in this

—1474—

case only concerned itself with the smuggling and nothing else?

Mr. Starkey: Objection, your Honor. He said, "primarily interested in the smuggling." I will object to counsel paraphrasing the testimony.

The Court: I think he said "primarily." I assume you will accept that.

Q. Did you get a description of Leon, the John Doe in the indictment, from the defendant Colson? A. Yes.

Q. That was in 1959? A. 1959, right.

Q. Now, tell the Court and jury what you did in apprehending Leon between July, 1959 and May 9, in 1961. A. Well, I made inquiries of seamen. I made inquiries of informants I have. My work took me up to the Harlem squads, the precinct squads. I made inquiry there. I was only supplied with a name, had no picture, had no last name.

Q. Jesse Colson was cooperating with you, wasn't he, in July or August of 1959? A. Yes; he was.

Q. Did you ever take Jesse Colson to the area in which he said he was doing business with Leon Aiken? A. No. I told Jesse to keep an eye out for Leon. I had no tangible

—1475—

evidence as to who he was. And if he did turn him up, to let me know.

Q. You did set up the defendants Massiah and Anfield for a meeting between the two, between Colson and him;

is that not true? A. With the cooperation of Jesse, yes.

Q. That is right. Did you ask Jesse to cooperate with you to locate the defendant Leon, that you were looking for? A. Oh, yes.

Q. And Jesse did not? A. He did not, no.

Q. In speaking with Jesse Colson, didn't you ascertain the locality or the neighborhood that he supposedly did business with him? A. He was a man about town, I was told. He had no particular locality. 135th Street, 145th Street.

Q. In your talks and conversations with Jesse Colson, didn't you ascertain if Leon was always around 136th Street?

Mr. Starkey: One moment, your Honor.
Did you say Leon Ellis?
Mr. Pogoda: The defendant Leon, Aiken.
The Witness: He said Ellis.

—1476—

Q. The defendant Leon. A. Will you please refer to Aiken?

Q. All right. In your conversations with Jesse Colson, wasn't it a fact or is it a fact that Jesse Colson told you that Leon Aiken could be found on 136th Street? A. He told me the areas where Leon, last name unknown at the time, frequented. I told him, "If you should see him, let me know."

Q. Didn't he tell you the defendant Leon Aiken operated a restaurant known as Leon's at 136th Street and Lenox Avenue? A. No; he did not.

Q. Who told you that? A. A private source of information.

Q. Was that in May of 1961, this private source of information gave you that? A. Yes. I believe so, yes.

Q. So that you all looked for the defendant Aiken for a period of almost two years before he was apprehended? A. I didn't hear that question.

Q. You searched for the defendant Aiken for a period of almost two years before he was apprehended?

Mr. Starkey: I will object to the question, your

—1477—

Honor. The witness' testimony speaks for itself in that regard.

The Court: Overruled.

Answer the question.

Mr. Pogoda: Are we going to recess now?

The Court: I thought maybe you wanted him to answer the question.

Mr. Pogoda: Well, that question is—

The Court: All right. The question is withdrawn.

We will recess now until 2.20, under the same instructions as before.

(Recess to 2.20 o'clock p.m.)

—1478—

AFTERNOON SESSION—2.20 P.M.

(Jury present.)

FINBARR J. MURPHY resumed.

The Court: The Court will make Court Exhibit 19 available to counsel for the defense.

All right. Let us proceed. Do you want to begin again, Mr. Pogoda?

Cross Examination by Mr. Pogoda (Continued):

Q. Now, Agent Murphy, I believe at the recess we were speaking about Leon Aiken. You knew of him in July or August of 1959, when he was arrested, and he was arrested in May of 1961. A. That was as Leon that I knew him.

Q. Did you ask Jesse Colson ever to accompany you in the area where he did business with Leon Aiken? A. No.

Q. Did you ask him to set up a meeting with the defendant Leon Aiken, as you had with the defendants Anfield and Massiah? A. Oh, yes. I told him if he saw him to let me know so that I could do something about it.

Q. Did you ever suggest or direct him to go in the area where he had done business with the defendant Aiken, to try to meet with him? A. Definitely, yes.

—1479—

Q. And did he report back to you that Leon Aiken was no longer in that area? A. I don't know whether he said

he was no longer in the area. I asked him periodically, "What about Leon?" And he said, "Well, I haven't seen him around."

Q. Did you search any federal records and show Jesse Colson photographs of people named Leon? A. I believe I inquired of the Federal Bureau of Narcotics.

Q. Doesn't the FBI have a record of everyone who has been arrested? A. Yes.

Mr. Starkey: Your Honor, I don't know whether—

Mr. Pogoda: I am coming down to it.

Mr. Starkey: I just want to state, your Honor, I don't know whether counsel is attempting to prejudice a defendant here or what, but I think this line of questioning is improper and—

The Court: Apparently he is in consultation with the defendant Aiken's lawyer, and I believe that it is with his approval. Otherwise we would have an objection from that source.

Q. Didn't you tell us before that you identified the defen-

—1480—

dant Anfield by a picture? A. Yes.

Q. Where did you get his picture? A. I got his picture from the Coast Guard.

Q. Does he have a criminal record? A. No; he does not.

Q. So that the only efforts you made to arrest the defendant Aiken were telling Jesse Colson to set up an appointment with him? A. I told him if he seen him, to let me know. If he seen him in a car, get a license plate number, get him in the area. And that's the way it stood.

Q. Did you ever offer to give him narcotics so as to approach the defendant Leon Aiken for the purpose of making

a deal with him? A. Did I ever offer to give him narcotics?

Q. Or pretend that you were giving him a package of narcotics for the purpose of setting him up for an arrest? A. No. I never did.

* * * * *

—1497—

Q. Do you have anything among your notes to describe the defendant John Doe, also known as Leon? A. Not in my notes. I believe that was given to Mr. Starkey by Jesse Colson.

Q. As best as you can recall, will you give us the description given to you by Jesse Colson of the John Doe mentioned in the indictment. A. Leon, last name unknown, male Negro, approximately five foot nine, five foot ten, 155, 160 pounds, chunky build. Colson told me that he had a discoloration on both sides of his cheeks here. The cheeks appeared darker in color than his forehead and the rest of his face.

That is the best of my recollection.

Q. That is the description given to you by Jesse Colson in August or July of 1959? A. That's correct.

—1498—

Q. Were you the one who arrested the defendant Leon Aiken? A. Yes.

Q. Was the arrest made by a New York City detective? A. Yes. That Friday evening, on the way home I stopped in at the 32nd Squad, and I spoke to a Detective Buchholt, and I showed him the picture of the defendant Aiken, and I showed him the warrant. I believe he noted down the warrant number. And I told him if he should come upon him to give me a call.

I was in Poughkeepsie at the time, visiting, and he called me about 3 a.m. in the morning, and he says, "I have him here." I naturally came right down, and I believe Detective Buchholt had him under arrest at the time based on a warrant, and when he turned him over to me I executed the warrant.

Q. And you have already related the conversation that you say took place between the defendant and you? A. Yes.

Q. You say he was the one who started the conversation with you? A. Yes.

Q. About buying stuff that you might get for him? A.

—1499—

Well, naturally I didn't start it. He started it.

Q. At that time he had already been booked, arrested? A. He was arraigned.

Q. He was already held on bail? A. That's correct.

Q. How much bail? A. Twenty thousand.

Q. And you say under these circumstances he started a conversation with you offering to do business with you in the narcotics trade? A. Among other things said, that is what he said to me.

Q. Did you ask him with whom he did business? A. I asked him for references as to whom he did business, that I could check him out.

Q. And he said he had no names to give you; isn't that so? A. No. He said he doesn't work that way. "You do business with me, and no one else knows what goes on."

Q. You did not proposition him to let him go if he would supply you with names? A. No; never.

—1500—

Q. You made no offer to give him any consideration if

he cooperated with you, did you? A. I can make no offers to anybody about receiving consideration.

Q. Well, the fact is that after Torres spoke with you, he was not arrested, was he? A. No; he was not.

Q. As far as you know, after the defendant, or after Schoolboy Ellis spoke to you, he was released in his own recognizance; isn't that so? A. Leon Ellis—I believe he was; yes, sir.

Q. And after Paul King came here from Seattle, Washington, and spoke with you and Mr. Starkey, there were no charges pressed against him, were there? A. I believe he was under arrest—actually no moving forward was brought against him.

Q. As far as the defendant Leon Aiken is concerned, he offered to do business with you, and you refused unless he gave you names for reference? A. In the conversation, naturally, when he came out with it, I am trying to squeeze him to come across, and I just went right along with him, and when he said, "Well, I won't give you any reference. When I do business with people, that's it"—I said, "Well, that is the way I work." That's it.

—1501—

Q. This was at a time when he was about to enter the federal House of Detention on West Street? A. Yes. I had just pulled up in front of the building.

Mr. Pogoda: I have no further questions.

The Court: All right, sir.

Mr. Somers: Your Honor, if we may, Mr. Carluccio apparently is still digesting some of this, so may I, so as to save the Court's time, propound a few questions and then reserve my rights until after

Mr. Carluccio is finished?

The Court: All right, sir.

Cross Examination by Mr. Somers:

Q. In 1951 you joined the New York City Police Force; right? A. In 1951, right.

Q. And you became a detective? A. Yes.

Q. When? A. In June of 1953.

Q. And you were a detective attached to the Narcotics Bureau for how long? A. No. I was not attached to the Narcotics Bureau.

—1502—

Q. Were you ever attached to the Narcotics Bureau? A. No; I was not. I was in the 46th Detective Squad at Ryder Avenue.

Q. So that you had very little traffic with narcotics as a police detective? A. Yes, you could say that. I knew about it, but that is a specialty with them.

Q. From your own experience with what you knew about narcotics and narcotics dealers, would you say that they were a rather cagey lot?

Mr. Starkey: Your Honor, I will object to this.

Mr. Somers: I think he understands me.

Mr. Starkey: Nevertheless, I object to asking the witness for a generality of that kind. There are dealers and there are dealers.

The Court: I am sure that the witness will agree that they are a cagey lot.

A. Well, they are cagey until they are caught.

Q. They are cagey until they are caught? A. Yes.

Q. But they don't go out in the street wearing signs that they are dealing in narcotics, of course, do they? A. No;

—1503—

they don't.

Q. Did you gain any impression at all, in your first meeting with Aiken, about whether or not he was a narcotics peddler? A. First impression?

Q. Yes. A. No.

Q. Now when did you first feel that this man indeed was a narcotics peddler? A. When did I first feel—

Q. Yes. At what time in your talk with him or acquaintance with him, or contact with him did you come to feel that you had a real narcotics peddler?

Mr. Starkey: I will object at this point, your Honor, because it assumes a fact not in evidence, and that is that Agent Murphy began to feel this way only after first meeting Aiken.

The Court: I think we ought to clarify this.

When you first came in contact with the defendant Aiken, what was the nature of that contact? Was it in connection with your work on this case?

The Witness: Yes, when I placed him under arrest.

Q. That would be in May of this year, May 13, I think

—1504—

it was, wasn't it? A. That's right.

Q. Of this year? A. Yes.

Q. Did you think after your initial meeting with him at 3 o'clock in the morning that he indeed was a narcotics peddler? A. From what I have known about him, yes.

Q. That is, you had formed a conclusion because of what

you had heard from Jesse and Schoolboy, I take it? A. No. I had other evidence of that fact.

Q. You had other feelings about it. So that you knew—you were reasonably convinced that this man was indeed a narcotics peddler? A. Yes; I was.

Q. You were? A. Yes.

Q. Did it strike you as strange that this man, who you felt was a narcotics peddler, should, on his first meeting with you—am I correct that you testified you had never seen him before? A. Never seen him before, right.

Q. You had never, in the course of your official duties, either as a Customs man or as a police man or a detective,

—1505—

run across the man before? A. Never have.

Q. This was the first time you had ever met him? A. The first time.

Q. Did it strike you as peculiar that he would approach you and ask you if you were willing to dispose of narcotics by way of him? Did that strike you as a little unusual in a narcotics peddler? A. You could have hit me with a brick.

Q. Yes. It was very unusual, wasn't it? A. That's right.

Q. That is not the sort of thing you would expect to hear? A. I almost fell out of the car when I heard it.

Q. You said something about Aiken, and you were talking—rather, Colson and you were talking about picking up Aiken after Jesse had told you about this man Leon? Leon was the name you gave; isn't that right? A. That's right.

Q. So you didn't tell Jesse, "Go around and see if you can pick up Aiken", did you? A. I didn't know what his last name was.

Q. Of course not. You knew of a man called Leon. A. Exactly.

Q. And you knew the man Leon to be not 155 to 160

—1506—

pounds but 145 pounds; isn't that right? A. You are speaking about the description?

Q. Leon. The description of Leon. Did you know how much he weighed? A. From Jesse?

Q. Yes. A. I figured about 155, as I remember it.

Q. As you remember it? A. Yes.

Q. And about how old he was? A. Approximately—well, when he gave me approximately 40, 45, the way he gave it to me.

Q. About how tall did you say he was? A. About five nine and a half, five ten.

Q. Five nine in the indictment, if you recall it. You have seen this indictment? A. I have seen it once, I believe.

Q. Look at it again for a minute, and it may refresh your recollection. How tall was he supposed to be? A. You are asking me about the first time Jesse Colson gave me the description of Leon?

Q. Well, now, look: Do I understand you correctly, Mr. Murphy, that you got certain information from Jesse about

—1507—

a man called Leon in the course of your talks with Jesse after he was arrested; is that correct? A. Yes.

Q. And Jesse didn't know Leon's last name; is that correct? A. That's correct.

Q. So he said, the man with whom he had done business was a fellow by the name of Leon, and he described him; is that correct? A. Yes.

Q. And how tall did he say he was? A. I would say about five nine and a half, as I remember it.

Q. Five nine and a half, now? A. Yes.

Q. When Mr. Pogoda spoke to you it was five nine or five ten—

Mr. Starkey: Your Honor, I submit counsel is now arguing with the witness and summing up at the same time.

The Court: Sustained.

Mr. Somers: Will you stand up and come over to the witness, please, Mr. Aiken.

Q. When you saw Aiken, did you notice the grey in his

—1508—

hair, in his temples? A. When I saw him?

Q. Yes. When you arrested him. A. I had his picture. That is the man.

Q. Look. You saw him. You looked at him, didn't you, Mr. Murphy?

Mr. Starkey: I will object to counsel shouting at the witness, also.

Q. (Continuing) I don't want to shout at you. You are a trained police officer. Did you notice the grey in his temples? A. Yes.

Q. Did you notice his weight? A. Stocky, yes.

Q. Would you say that that man is 165 pounds?

Mr. Starkey: Your Honor, again I will object on the ground that counsel is arguing and summing up,

and this is not an appropriate cross-examination of this witness.

The Court: I think you are arguing with the witness.

Mr. Somers: All right. I will not. I am sorry.

Q. Mr. Murphy, did you compare him mentally or in any

other way with the description that you had gotten from Jesse Colson as to his height, his weight, his apparent age? A. No.

Q. You did not? A. No.

Q. You didn't think that was necessary, that was required. You just picked him up as Leon? A. His picture was identified by two people.

Q. Just a moment. Please respond to my questions.

Mr. Starkey: I submit the answer was responsive.

Q. (Continuing) Just respond to my questions.

The Court: Just ask him a question, please.

Q. (Continuing) Mr. Murphy, did it ever occur to you, after you had arrested him and looked him over, that he didn't quite fit in with that description? A. No.

Q. You felt that he did? You felt that this man, whom you had in custody, was five feet nine, was indeed 165 pounds; is that correct? He was indeed about 40 years of age, is that correct?

Mr. Starkey: Your Honor, first of all I will ask that counsel ask one question at a time, and again that he refrain from arguing with the witness.

—1510—

The Court: I think the witness has said time and again that he arrested this man on the basis of a photograph which he had in his hand.

Mr. Somers: I see. I am asking him now, if your Honor please, whether or not this particular description which he had gotten from Colson, upon which apparently the defendant was arrested and named in the indictment by that description, did indeed fit the description of the suspect.

The Court: I will sustain the objection to that, because that is argument. That is a question for the jury. You will be given an opportunity to argue to the jury, but there is no use in arguing with this witness. Let us proceed.

Q. So that let us bring you down to this: Jesse was arrested in 1959, July of 1959; is that correct? A. That is correct.

Q. And then you testified that you had eighteen or twenty conversations with Jesse?

The Court: He said that.

Q. About twenty conversations. Jesse had originally been held in $50,000 bail, and after talking to you bail was reduced to about $3500? A. That's correct.

—1511—

Q. And he was released on bail? A. Yes.

Q. And he was out in the street? A. Yes, sir.

Q. About when would you say he was out in the street? August or thereabouts? A. Some time in August.

Q. In August of 1959? A. '59, right.

Q. And we know that you didn't pick up this defendant, Leon Aiken, until May of 1961? A. That is exactly correct. Right.

Q. Now, you told Jesse, "Go out and pick up this man you described as Leon." Is that correct? A. I told Jesse Colson that if he sees him, if he gets any data on him, where he could be located, it would help me in apprehending him, so please do so. He is known more around those circles than I am.

Q. And after you had gotten this information from Jesse, and before you arrested Mr. Aiken, somewheres in between that time you presented your findings, your results from your investigation to the United States attorney for prosecution, is that correct, for whatever purpose the United States attorney wanted to use it for? A. Yes. I brought him in to speak to the United States attorney.

—1512—

Q. You were present when this man was described as Leon. You heard him describe this man by the description that we now find in the indictment; is that correct? A. Yes.

Q. And subsequently thereafter, this evidence was presented, some time in March or very late in February, to the federal grand jury in the building; is that correct? A. I surmised, yes.

Q. Do you know whether or not Jesse Colson testified? A. I believe he did; yes, sir.

Q. And you testified too, didn't you? A. No. Not in this indictment.

Q. You did not testify before the grand jury? A. In this particular indictment?

Q. Yes. A. No.

Q. Oh, my impression was that you had, because there was some talk about your grand jury testimony. Am I mistaken about that? A. This is prior to Aiken's arrest.

—1513—

Q. Mr. Murphy, I don't want to confuse you. I am speaking of this particular proceeding, not only of Aiken's arrest.. Of this particular proceeding.

Mr. Starkey: I submit, your Honor, that the witness and counsel are talking about the same thing, and that his testimony is accurate.

The Court: When did you testify before the grand jury? How long ago?

The Witness: In 1958.

Q. And you know that Colson testified thereafter?

Mr. Starkey: If I may interrupt, your Honor, I did request, during the luncheon recess, that the grand jury minutes of which Agent Murphy spoke be transcribed, and I have them here at this time. The government has no objection, if the Court is inclined, to delivering them to defense counsel.

The Court: Please do so.

Mr. Starkey: May I have them marked as a Court exhibit?

(Marked Court's Exhibit 21 for identification.)

Q. But before this indictment was voted and filed, on the 3rd of May, you knew that a person by the name of Leon was involved in this particular trap; is that correct? A. Yes.

—1514—

Q. And you knew the person whom we know as Leon, whose last name was unknown to you, was, according to Jesse, about forty years old, weighed 165 pounds and was about five feet nine; is that correct? A. Five feet nine and a half. In or around there.

Q. Didn't you think it very important to mention that he was of very dark complexion?

Mr. Starkey: Wait a minute, your Honor. I object to that as—

The Court: Sustained. There is no basis for that.

Mr. Somers: Will your Honor hear me for one moment on that?

The Court: Yes.

Mr. Somers: Specifically in the course of the testimony during this trial there has been mention that the defendant was light complected. The very words—light complected.

The Court: That is what the indictment says.

Mr. Somers: No. The indictment was "medium complexion."

The Court: Oh, I am sorry.

Mr. Somers: Now let the jury see whether or not

—1515—

this man was medium complected. He has now referred to him today for the first time as very dark, in his examination on the stand today, very dark, indicating that he is a very Negroid man.

The Court: Mr. Somers, that is all a matter of argument.

Mr. Somers: But this is cross-examination.

Finbarr J. Murphy—for Government—Cross

The Court: But you can't argue even on cross-examination, so let us proceed.

By Mr. Somers:

Q. Did you tell Mr. Starkey what you thought of the color of this man, whether it was light, medium or dark, this man, Leon?

Mr. Starkey: Your Honor, I will object to this. At the time that this indictment was voted and evidence was presented, Agent Murphy has testified he had not seen him. He didn't know what he looked like.

Mr. Somers: Of course he didn't. That is exactly it.

The Court: Now that you have made that point, let us go on to something else.

Mr. Somers: He described it. We know he didn't know him.

—1516—

Mr. Starkey: There is no evidence that Agent Murphy described the individual to me, either.

The Court: All right. Let us proceed.

I think the witness testified that Colson described the defendant to the United States attorney, the assistant United States attorney. So let us proceed.

By Mr. Somers:

Q. So that when this indictment was presented to the grand jury, the grand jury was in possession of all the facts as Colson had given them to you, with relation to this man, Leon?

Mr. Starkey: I will object, your Honor. Counsel knows full well that the agent could not be in the grand jury at that time.

The Court: I sustain the objection.

Mr. Somers: Withdrawn.

Q. But in any case, you told Mr. Starkey, or the United States attorney's office, his predecessors, Calanda, Palermo, all about what Jesse told you with respect to the man, Leon? A. I believe so, yes.

Q. Incidentally, when was it Jesse opened up for the first time to you and mentioned this man, Leon? A. Around in August of 1959.

—1517—

Q. Do you recall what he told you about Leon? A. Yes. He told me about him in United States Attorney Palermo's office.

Q. I mean, he told you about him, but did he tell you that he had done business with him, and so forth? Let me know what he told you he had done with Leon? A. He said Leon was a big connection for him towards the end of his dealing in cocaine. He told me that Leon took two of the loads that came up from Chile via the Chileans.

Q. So that Leon at this point was known to you as the most important man in this combination, from the money point of view; is that correct? A. The biggest buyer, yes.

Q. He was a very big fish in this pond, wouldn't you say? A. That's right.

Q. And didn't you feel, as a Customs officer, as a law enforcement officer, as a narcotics man, that it was very important to catch this big fish? A. Yes. Once you have him identified, yes, bring him in.

Q. Yet you took, according to your testimony on cross-examination by Mr. Pogoda, a few minutes ago—you took

—1518—

no very positive steps to apprehend him?

Mr. Starkey: Your Honor, I will object to that as counsel's confusion. I think the witness—

The Court: Sustained. We have been through this.

Q. You heard here in court several days ago Schoolboy testifying that he made repeated deliveries and met on repeated occasions Aiken, Leon Aiken, at 136th Street? A. Yes.

Q. Now, always between Lenox and Seventh Avenues, he said, and that was always where he went to find him; is that correct? You heard him say that? A. He was known in the neighborhood; yes.

Q. Did you know that before you heard about it here in court? A. I knew that spot. I knew other spots: 125th Street. He was a man about town. I knew that.

Q. Yet, it took two years before this man was picked up. Even you knew—

Mr. Starkey: Your Honor, I will object. Two years from what? He talks about Schoolboy's testimony—

Mr. Somers: I will make it very definite.

—1519—

Q. (Continuing) Yet, despite the fact that in August, 1959, you knew about this big fish in this puddle, and you knew where he could be found, you say that it took two

years, it was not before two years that he was apprehended?

Mr. Starkey: Objection. It is argumentative.

The Court: I will sustain the objection. It is argumentative.

Mr. Starkey: Agent Murphy knew where to look at that time.

The Court: You are arguing to the jury.

Q. You said in this conversation with Aiken when you took him into West Street, you used the words verbatim. Do you know what "verbatim" means? A. Word for word.

Q. Is that all there was to the conversation? A. Was that all there was?

Q. Yes. The conversation you testified to between you and Aiken on the occasion when you brought him into West Street for incarceration. A. No. There was other conversation.

Q. Did you say to him, "I've got you on a cross"? Remember this now. Did you say to him, "I've got you on a

cross"? A. I may have, yes.

Q. And did you say, "I've got you on three counts. You are facing ten years minimum on each. That's thirty years for you"? A. No.

Q. You didn't say that? A. No. I told him if he is convicted he faces a minimum of ten years; yes, sir.

Q. On each count? Isn't that what you told him? A. On each count, yes.

Q. And that he had three counts? A. No.

Q. You didn't use that expression? A. No.

Q. And did you say to him—didn't you ask him whether

he had any connection with the Italian mob? A. Yes.

Q. You did? A. Yes.

Q. And didn't you say to him, "If you give us some dope on the Italian mob, it will go a whole lot easier for you"? You understand that? Words to that effect? Not verbatim. Did you? A. Yes. Eliciting information from a man, I could say that, yes.

—1521—

Q. You said to him, in short, that you had him on a cross. He was facing thirty years. You wanted some dope on the Italian mob.

The Court: I sustain the objection. You are summing up again, Mr. Somers.

Q. Let me know when you first met Leon Ellis. A. Leon Ellis?

Q. Yes. A. The date of the arrest.

Q. And that would be about April 4, am I right? A. What was the date of that?

Mr. Somers: What was it, Mr. Starkey?

Mr. Starkey: April 25th or something.

Q. Leon Ellis was arrested April 26th, following the filing of the indictment on March 3? A. That is correct.

Q. Were you looking for Leon Ellis? A. Yes; I was.

Q. Were you looking for Leon Ellis because he fit the description that Jesse Colson had given you about this male Negro of medium complexion, forty years old, five feet nine, 165 pounds? A. No. I knew Schoolboy was not Leon.

Q. You knew that? A. Yes. Positively.

—1522—

Q. Jesse spoke to you specifically and said, "There is a Leon Ellis and there is a Leon whose last name I don't know"? A. No. I asked him. Schoolboy is Schoolboy and Leon is Leon.

Q. Didn't you tell Mr. Pogoda that you didn't know Schoolboy's first name, and Jesse didn't tell you his first name? A. That's correct.

Q. When did you first find out that there was a guy by the name of Leon Schoolboy and a guy by the name of Leon Aiken? When did you find that out, and from whom? A. Schoolboy was identified through his prints. When I locked him up, I asked him his proper name. That's Leon Ellis. Now, what's the next question?

Q. How did you get his prints, by the way? A. How did I get his prints?

Q. Yes. A. I took them.

Q. But you must have apprehended him to get them. A. That's right.

Q. How did you come to apprehend him, I want to know? How did you come to arrest him? A. I arrested him under

—1523—

the federal narcotics rules. I didn't arrest him. Another Customs officer arrested him.

Q. Without revealing your source, what was the basis for the arrest? A. The basis for the arrest?

Q. Yes. Wasn't it because of the conversation that you had with Colson? A. No. No. I had another, independent source.

Q. Do I understand from you that Colson never brought Schoolboy into the conversation? A. You are losing me now on these questions.

Q. I don't want to lose you. You are losing me, too. Do

I understand that Colson never mentioned in the course of these eighteen or twenty conversations that he had with you and U. S. attorney's office, never mentioned the name of Leon Schoolboy Ellis? A. As I stated, Colson only knew Leon Ellis as Schoolboy.

Q. He didn't know his first name at all? A. No.

Q. And you found out, you arrested Schoolboy as a result of information that Colson gave you? A. Plus other, independent information.

Q. Plus other, independent information? A. Yes.

—1524—

Q. And then, after you printed him, you found in comparing his records with the FBI record and his prior convictions, that he was indeed Leon Schoolboy Ellis? A. Yes. The prints came back.

Q. This is when you knew it? A. Yes.

Q. And you charged him with a violation of the Harrison Laws, with possession of the six ounces of cocaine on the 12th of February, as we have discussed; is that correct? A. Violation of 173 and 174.

Q. Yes. That is what I mean. A. Yes.

Q. And that was around the 24th or 25th of April of this year? A. That he was under arrest; yes, sir.

Q. And you found out by comparing the prints who he really was and what his real name was? A. He told me when I arrested him.

Q. But up until then you only knew him as Schoolboy, because that is the only way he was referred to by Colson? A. That's right.

Q. I want you to take a look at Court's Exhibit 19. Do you recognize that? A. Yes. This is my report to

—1525—

Tendy.

Finbarr J. Murphy—for Government—Cross

Q. That is your report to Mr. Tendy, who is the United States attorney, chief of narcotics, here in the building; isn't that right? A. That's right.

Q. Is that the date you made the report? A. Yes.

Q. That is the date? A. Yes.

Q. November 25, 1959? A. Right.

Q. I show you item 7. Read that aloud, please.

Mr. Starkey: Wait a minute. One moment.

Q. (Continuing) Read it to yourself. A. (Witness examines.) Right.

Q. What does it say?

Mr. Starkey: Again, your Honor—

Mr. Somers: I will offer it, if he likes.

Mr. Starkey: No objection.

Mr. Somers: I will offer it.

Mr. Carluccio: I object.

Mr. Somers: I haven't read it, so I will withdraw the offer. I will refer to it.

Q. Does this refresh your recollection whether or not

—1526—

for the first time when you arrested Schoolboy in April of this year, that you for the first time, now, found out his name was in fact Leon Ellis? A. Well, according to that report I must have had his name.

Q. So you knew in November of 1959, months before he was arrested, a year and a half before he was arrested, that there was indeed another Leon involved in this case? A. Yes. In that report—

Q. Well, this is your report, isn't it? A. I wrote it.

Q. And in this report you referred to him as Leon Schoolboy Ellis? A. I gave him his full name, right.

Q. So you knew in November of 1959 that there was a Leon Ellis in the case? A. Right.

Q. So you were mistaken about learning for the first time— A. To the best of my knowledge, that's right.

Q. When did you get that information about Leon Ellis when you wrote Tendy in 1959 about it? When did you get that information? A. Well, that must have been from

—1527—

Colson, then, or this other fellow.

Q. That is right. So that in 1959, Colson advised you about Leon Ellis, or from advice that you got from Colson, as Schoolboy, you determined and found out that Schoolboy was Leon Ellis? A. I cannot state definitely whether it was Colson or my other source.

Q. But you knew that there was a Leon Ellis? A. I definitely knew. From that report, I definitely knew.

Q. So that when you presented all your evidence to Mr. Starkey for ultimate presentation before the grand jury, you were well aware of this picture of an individual by the name of Leon Ellis; is that correct?

Mr. Starkey: Your Honor, in the first instance I think counsel is shouting at the witness again—

Mr. Somers: That is a failing that I humbly apologize for. I do not intend to intimidate Mr. Murphy, and I do not think I am capable of it.

Mr. Starkey: In the second instance, your Honor, I think a statement that he was well aware at a given time is at variance with his testimony so far.

The Court: Let us proceed. I think it is clear from the witness' testimony that he did not know the name of Leon Ellis as Schoolboy in 1949.

—1528—

Mr. Somers: 1959, your Honor.

The Court: Yes. 1959. I think it is clear from the witness' testimony.

By Mr. Somers:

Q. You have seen this indictment? A. I have read through it once.

Q. Have you seen anywhere in this indictment the name Leon Ellis?

Mr. Starkey: Again, your Honor, I will object. The indictment speaks for itself.

The Court: The indictment speaks for itself, but I think counsel will stipulate that there is no Leon Ellis in the indictment.

Mr. Somers: All right, your Honor. And counsel will also, of course, stipulate that the only mention of Leon, other than Leon Aiken, as a defendant in the eighth count, is Leon in the title and the description of Leon; is that correct?

Mr. Starkey: The government will so concede, your Honor.

The Court: All right. Let us proceed.

Q. Do you know of your own knowledge whether or not, independent of this proceeding, the arrest of Leon Ellis, charged with the six ounces of cocaine, was succeeded by any further proceedings on the part of the government?

—1529—

Do you know this at all? This is your case, isn't it? A. I know of none.

Q. Nothing has happened since? A. Nothing.

Q. Other than what may have happened in connection with this case? I mean by that, Mr. Murphy, there is no

independent proceeding in which Leon Ellis is involved criminally with the United States attorney's office, so far as you know, with narcotics? A. No.

Mr. Somers: Will it be conceded that there is not?

Mr. Starkey: We have a complaint on which Leon Ellis was arrested, in evidence.

Mr. Somers: Will it be conceded that there is no further proceeding independently of that, counsel?

The Court: I think the witness will testify that he does not know of any.

Mr. Starkey: And the government will so stipulate.

Mr. Somers: That there is no other?

Mr. Starkey: That is right.

Q. When Aiken was arrested, he came into your office

—1530—

with Mr. Starkey or into Mr. Starkey's office with you, as the case may be, and he said his name was Leonard Royall Aiken? A. That's correct.

Q. And he said he knew Schoolboy? A. That's correct.

Q. Was he questioned whether or not he dealt in narcotics?

Mr. Starkey: I object at this time, your Honor. I am going to object to counsel attempting to put in a defendant by hearsay as a government witness. This exceeds the scope of the witness' direct examination, and I am going to object and press the objection. I do not think it is proper cross-examination.

The Court: Let us proceed. You cannot put in self-serving statements of this witness.

Q. You questioned him at the time, did you not, and you asked him if he knew a number of people by name, did you not, or Mr. Starkey did, one or the other or both of you? A. Yes. I left that for Mr. Starkey.

Q. And Mr. Starkey asked him whether he knew Schoolboy, and you testified that he said yes, he knew Schoolboy?

—1531—

A. Yes. During the statement he admitted knowing Schoolboy.

Q. Did Mr. Starkey ask him whether he knew Jesse Colson? A. I don't think so.

Q. You don't think he did? A. To the best of my knowledge, no.

Q. Do you know if he asked him if he knew Winston Massiah? A. I don't think so.

Q. Duke Anfield? You don't remember; is that it? A. No.

Q. You don't remember that? A. No.

Q. Did he at any time admit any traffic in narcotics?

Mr. Starkey: Again, your Honor, now I am going to object—

Mr. Somers: I will rephrase it, if I may.

The Court: Let the question be rephrased.

Q. Was there any discussion about narcotics among Mr. Starkey, you and Mr. Aiken at the time he was brought to Mr. Starkey's office?

Mr. Starkey: Objection.

—1532—

The Court: He has testified to a conversation already. Do you want to limit this question as to what happened in Mr. Starkey's office?

Mr. Somers: That is all. Nothing beyond that. There was only the one meeting so far as the evidence here concerned has brought out.

Mr. Starkey: I think that counsel is now trying to—

Mr. Somers: I will drop it. I will withdraw it.

Q. Incidentally, Mr. Murphy, can you tell us where Jesse Colson is now, if you know? A. Yes.

Q. Where? A. He is in the Federal House of Detention.

Q. Here in New York? A. Right.

Q. Do you know when you saw him last?

Mr. Starkey: I will object to that, your Honor.

Mr. Somers: When was the last time he saw him?

Mr. Starkey: I object, your Honor, and I think that is irrelevant.

—1533—

The Court: I think it is irrelevant.

Mr. Somers: No. I think it has a definite connection.

The Court: Why is it relevant?

Mr. Somers: Because I want to bring out in conversations, if it is so, subject to the commencement of this trial, certain information came out here in the trial that was not—

The Court: I will overrule the objection.

By Mr. Somers:

Q. When was the last time you saw Jesse Colson? A. I seen Jesse Colson last week, the beginning of the week, I believe.

Q. That would be during the course of this trial while this trial was in progress? A. Yes.

Q. Did you speak to him? A. Yes.

Mr. Somers: That is all at this time, your Honor.

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—1556—

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Redirect Examination by Mr. Starkey:

Q. Agent Murphy, did you make any arrest of defendants in this case without the authorization of the United

—1557—

States attorney? A. No. I was always advised by your office to make the arrest, except—yes. That's right. All of them.

Q. I believe you testified that you gave all the information to the United States attorney which you received from Colson so far as Aiken's physical description goes; is that correct? A. Yes. I believe I did.

Q. And did you in fact give every detail? A. No. I left out one detail.

Q. And that was? A. That was the fact about the darker shadings on his face.

Q. You were asked about whether or not Castro had any knowledge about the cocaine aboard the ship, and you answered yes. Will you tell the Court and jury what that knowledge was that he disclosed to you?

Mr. Carluccio: Objection, your Honor. It is beyond the scope of the—

The Court: I will sustain the objection. I think that we are getting into deep water there. Proceed.

Mr. Starkey: That is all.

—1558—

Recross Examination by Mr. Somers:

Q. Mr. Murphy, between the time you testified in response to my questioning and now, did you talk to Mr. Starkey? A. Oh, yes.

Q. Did you talk to him about the complexion of Leon Aiken? A. Yes.

Q. You did? A. Yes.

Q. And you now state that you forgot to mention that when you gave your information to the United States attorney? A. Yes. I figured Colson would do that.

Q. You figured Colson would do that. And you know, of course, that this indictment that was brought by the grand jury mentions this—

Mr. Starkey: Again, your Honor, I am going to object to charging the witness with the information found in the indictment.

The Court: The indictment speaks for itself. I think that is really a matter of argument, Mr. Somers.

Mr. Somers: All right.

Q. At any rate, since my questioning, you spoke to Mr. Starkey about the complexion of this man?

—1559—

Mr. Starkey: Your Honor, I will object to that. It is repetitious. The question has been asked and answered.

Q. (Continuing) And you said yes; is that correct?

The Court: I am not sure I understand the question. Are you asking whether or not—

Mr. Somers: Since my eliciting the fact on cross-examination that Mr. Aiken was a man of very dark complexion, he stated that he subsequently spoke to Mr. Starkey about Mr. Aiken's complexion.

Mr. Starkey: Your Honor, I will object to the characterization.

The Court: Let us cut through all this.

Did you talk to Mr. Starkey about Mr. Somers' examination with reference to the complexion of the defendant Aiken?

The Witness: Yes; I did.

Q. That was after my examination?

Mr. Somers: I just want to make that clear.

A. It was not the first time, but after; yes, sir.

Mr. Somers: Thank you.

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—1568—

New York, June 27, 1961,
10:30 A. M.

(Trial resumed.)

(Jury present.)

Mr. Somers: Your Honor, before we proceed, may I have just one minute with Mr. Starkey at the bench?

The Court: Yes.

(Discussion at the bench, out of the hearing of the reporter.)

The Court: Call your witness, please.

Mr. Starkey: The government calls Jack Caster.

Stipulation

Mr. Somers: Before you do that, can we have that stipulation on the record?

Mr. Starkey: Yes.

Ladies and gentlemen of the jury, counsel for the defendant Leonard Aiken and the government have agreed to stipulate to facts for the benefit of the expeditious proceed of this case, and that is that at the time of the arrest, at the time that Agent Murphy

—1569—

took Leonard Aiken into custody from the New York City Police Department, he found no narcotics in his possession or on his person at that time, and, secondly, that he did not search his apartment or his dwelling place at that time.

Mr. Somers: Thank you.

The Court: All right. Call your witness.

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The Court: Does the Government rest?

Mr. Starkey: Yes, your Honor.

The Court: All right. We will excuse the jury for a few minutes.

(The following transpired in the absence of the jury.)

The Court: All right. Is there a motion?

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—1587—

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Mr. Somers: • • • I take it that the only count that will be submitted to the jury with reference to the guilt or innocence of Leonard Aiken is the conspiracy count, Count 8.

Now, there, your Honor, I think the record has shown that this, at best—and I am accepting everything said with relation to Aiken, specifically the testimony largely of Schoolboy Ellis to be true—even if that were in fact true, all this defendant Aiken would be guilty of is a substantive count of violation and perhaps of the narcotic law. Not conspiracy, because there is nothing in the record to indicate that Aiken conspired with any of these co-defendants to either import, distribute—and so forth and so on.

If you could extend the theory that any man that does business with a man who imports narcotics is in effect a conspirator to violate the law, every single sale, every single purchase from a dealer of narcotics would in effect be a conspiracy to violate the

—1588—

law. I don't think that that is what the Act intends.

If Aiken is liable to the government for anything here, it would be on a separate, isolated substantive count of violation of the narcotics law and not of conspiracy.

Appreciating the fact, your Honor, that it takes two to make a conspiracy, and in that sense I anticipate Mr. Starkey's argument that the seller is in this instance Colson, the purchaser in some instance Aiken, who are between them conspiring, and thus forming the combination the law requires to constitute conspiracy of at least two people, we still have the question of an overt act.

Now, again, also appreciating and anticipating Mr. Starkey's argument that a conspirator is bound by the overt act of any of his co-conspirators in the

furtherance of this conspiracy, even though he himself—and in this instance Aiken—is not charged with any overt act personally, I submit that there has been no such overt act as between Colson and this man mentioned in this indictment that could constitute what the law requires to be a conspiracy, namely, the combination of two or more people to violate the law, and an overt act in furtherance of it.

—1589—

Because of that, I submit, Your Honor, that the government has failed to make out a prima facie case as a matter of law under Count 8 against Leonard Aiken.

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The Court: The Court is ready to rule.

The ruling is that the motions for judgment of acquittal are all denied, with the exception of Mitchell Anfield's motion with reference to Counts 1 and 2. With reference to Counts 1 and 2, judgment of acquittal will be entered as to Mitchell Anfield.

We will take a five-minute recess.

(Short recess.)

The Court: The government has rested. In connection with the Court's rulings, the evidence heretofore restricted to the eighth count is now admitted as to defendant Massiah on Counts 1, 2 and 7.

As the Court understands it, the defense will now rest.

Do all defendants rest?

(All defense counsel nodded affirmatively.)

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Motion to Dismiss Count 8

—1598—

AFTERNOON SESSION

1:30 P.M.

The Court: Ladies and gentlemen of the jury, summation of counsel for the defendants will now begin.

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—1698—

New York, June 28, 1961,
10:00 o'clock a.m.

Trial resumed.

Mr. Somers: Your Honor, can Mr. Starkey and I, for one moment, approach at the bench?

The Court: Yes.

(The following discussion at the bench:)

Mr. Somers: The defense having rested, your Honor, I now move for a dismissal of the eighth count of the indictment, and I respectfully direct your Honor's attention, first, to paragraph 1, and I direct that motion to paragraph 1, on the ground that there has been absolutely no testimony linking the defendant Leonard Aiken with the allegation in Count 1 which has to do with the importation of narcotics.

Mr. Starkey: It is Count 8, sir.

Mr. Somers: I mean paragraph 1. I want to limit Count 8 to paragraph 1 alone for the first consideration. There is no consideration linking this man to a conspiracy with respect to paragraph 1 in Count 8.

—1699—

The Court: I deny that motion.

Mr. Somers: I make the same motion with respect to paragraph 2.

The Court: Same ruling.

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—1808—

Charge of the Court

New York, June 29, 1961
10:30 o'clock a.m.

(Wright, J.)

(Jury present.)

The Court: Ladies and gentlemen, you have heard the evidence and the arguments of counsel, and now it becomes my duty to give you the law governing this case.

It is your duty to accept the law as it is given to you by the Court, and to determine the facts of the case for yourselves, and the proper application of the law of the case to the facts of the case as you find them determines your verdict.

I wish to make it very plain to you that the sole responsibility and the sole power in determining the facts is with you, and anything that I may say as indicating any view or opinion on the facts can only be advisory to you.

—1809—

Now, there are some general principles of law which are of importance in every criminal case, and I wish first to make some statements that apply to criminal cases in general, after which I shall endeavor to make clear to you what this particular case involves.

Charge of the Court

It is a principle well recognized in the law that every person who is charged with the commission of a crime is presumed to be innocent, and the burden rests upon the government to establish to your satisfaction beyond any reasonable doubt that the party is guilty as charged. This presumption of innocence remains with the defendant all through the trial of the case until, if ever, it is overborne by proof which convinces you beyond any reasonable doubt that the presumption of innocence no longer remains with him. So you look at all the evidence introduced in this case and ask yourselves whether or not you are satisfied beyond a reasonable doubt that the offense has been committed as charged in the indictment.

If you are so satisfied, then it will be your duty to convict the defendant or the defendants, but if there exists in your minds a reasonable doubt of his or their guilt you

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must then give them the benefit of that doubt and acquit them.

So, if there are two reasonable theories equally supported by the evidence, one of which is consistent with the guilt of defendants and the other consistent with their innocence, then you must adopt that theory consistent with their innocence and acquit them, because they could not then be said to be guilty beyond a reasonable doubt.

Now, the term "reasonable doubt" as used in this charge doesn't mean just any possible doubt you might have; it means such reasonable doubt as a careful, prudent and reasonable man or woman ought to entertain in the circumstances proved. It means a doubt based on reason which is reasonable in view of all the evidence.

It doesn't mean a vain, fanciful, or whimsical doubt, nor does it mean a possible doubt created by the reluctance

on the part of the jury to perform an unpleasant task. It means a doubt arising out of the evidence as based on substantial grounds, and one is said to be convinced in a case of this kind beyond a reasonable doubt when, after an impartial comparison and consideration of all the evidence, you can conscientiously say that you feel an abiding con-

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viction to a moral certainty of the truth of the charge. If there is a reasonable doubt in your minds about the guilt of the defendants on a charge in the indictment, they are entitled to the benefit of such reasonable doubt and an acquittal. If, on the other hand, you think their guilt is clear beyond a reasonable doubt, then you must find them guilty.

Now, the machinery of a trial calls for the exercise of varying functions, by counsel, by the witnesses, by the Court and by the jury. You, as the jury, exercise two important and exclusive functions. First, as you have been told, you are the sole judges of the facts; that is to say, it is you who must consider the evidence, weigh the evidence, and draw inferences from the evidence, but only from the evidence.

The law recognizes two kinds of evidence upon either or both of which juries may lawfully find an accused guilty or innocent of a crime. One is direct evidence and the other is circumstantial evidence.

Direct evidence is usually testimony of an eye witness concerning the facts in dispute themselves. Circumstantial evidence, on the other hand, is evidence which tends to prove a fact in dispute by proof of other facts from which a legitimate inference of the facts in dispute can be drawn.

—1812—

To put it another way, circumstantial evidence consists of facts proved from which you, the jury, may infer the

existence of the facts sought to be proved and which reasonably follow according to the experience of mankind.

Now, evidence is sometimes given by accomplices in a criminal trial. It is the universal rule in the Federal Court that defendants may be convicted on the uncorroborated testimony of accomplices alone. Nevertheless, the testimony of an accomplice should be scrutinized carefully and viewed with great caution.

Also with reference to accomplices, if the government has failed to call a witness, whether he be accomplice or otherwise, who is equally available to both sides, you may not draw an inference that the testimony of that witness would have been unfavorable to the prosecution.

You must also, in determining what the facts are, distinguish between mere arguments which are made before you and the evidence upon which those arguments rest. The repetition of an argument, however often, doesn't constitute evidence. You must carefully analyze the assertions

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which are made to you by either side and see what bases those assertions have in the evidence.

Now, your second exclusive function—first is the finding of the facts. Secondly your exclusive function is passing upon the credibility of the witnesses.

Now, you can see this is a very important function because to determine where the truth lies you must, of necessity, decide who is telling the truth. How you ought to do this is left to your own determination as men and women with human experience in the affairs of life.

Among other things, in determining the credibility of a witness the jury may consider his manner and demeanor on the witness stand, his interest, prejudice or bias, if any, whether he has a purpose to serve which might color his

testimony, his means of knowing what he has testified to, the probability and possibility of his testimony, the consistency or inconsistency of his statements, the reasonableness or unreasonableness of his statements in view of all the circumstances surrounding that testimony, including whether or not he has been contradicted by other credible evidence and whether or not he has made state-

—1814—

ments at other times and places contrary to those made on the witness stand.

The jury is not bound to believe unreasonable statements just because they are sworn to, for we know that anyone can swear to anything if he has the will to do so.

If conflicts in the testimony of the witnesses exist, it is your duty to reconcile them without imputing perjury to any witness. But if you find that a witness has wilfully and falsely testified on a material matter, you should, of course, disregard that false testimony and you may, if you choose, disregard any and all testimony by such witness. The credibility of the witnesses and the weight of their evidence are matters solely for your determination. The Court cannot help you in this. You are the exclusive judges in determining where the truth lies.

Now we come to the proposition that in entering upon the final stage of this case your responsibility is to take the evidence, weigh it, and, considering the charges made in the indictment, render a just verdict, a verdict that is just to the government of the United States, a verdict that is just to these defendants.

—1815—

Now, this brings us directly to the charges themselves. The charges are in the form of an indictment. As it has been explained to you previously, an indictment is not evidence, and no inference whatever may arise from the fact that an indictment has been found in this case or in any

other case. It is merely a charge. It is merely the means by which defendants may be placed on trial before a jury such as you so that you may decide their guilt or their innocence without drawing any inference whatever from the facts of the indictment.

Now, in this particular indictment, and as far as this trial is concerned, we are interested in four counts: Counts 1, 2, 7 and 8.

In 1, 2, and 7 there is only one defendant on trial. That is the defendant Winston Massiah. He is the only defendant on trial in 1, 2 and 7.

In count 8, which is the conspiracy count, all four defendants are named, all four defendants are on trial on that count, the conspiracy count.

Now, the statute which Winston Massiah is accused of violating in count 1 of the indictment reads as follows—this is from the Criminal Statutes of the United States—

—1816—

> "Whoever brings on board or has in his possession or control on board, on any vessel of the United States, while engaged in a foreign voyage, any narcotic drug not constituting a part of the cargo in the manifest or part of the ship's stores, shall be prosecuted."

Now, in order to find the defendant Massiah guilty of the crime charged in count 1 in the indictment you must be convinced beyond a reasonable doubt on each one of these elements of the offense. If you have a doubt about any one of these elements, a reasonable doubt about any one of these elements, then you must bring in an acquittal.

First, that on or about May 6, 1958, in the Southern District of New York, the defendant Massiah either brought

a narcotic drug on board, or had a narcotic drug in his possession on board the S/S Santa Maria.

Now, the narcotic drug which is sought to have been proved in this case is cocaine, and if you find that it was cocaine, then you will also find that it is a narcotic drug because as a matter of law cocaine is a narcotic drug.

The second element which you must find to be proved

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beyond a reasonable doubt is that the substance marked in the Government's Exhibits, 9-A-E and 11-A, B—those are the two exhibits which form the part of the alleged cocaine found in the after peak of the Santa Maria—you must find that they are narcotic drugs. And in connection with that particular element you will remember the testimony of the chemist who made tests in connection with these particular exhibits.

The third element, that at the time the Santa Maria was a vessel of the United States, that is, registered pursuant to the law of the United States and flying an American flag.

And fourth, that at the time the Santa Maria was engaged in a foreign voyage, that is, traveling from ports in this country to ports outside this country.

And fifth, that the narcotic drug didn't constitute a part of the cargo entered in the manifest or part of the ship's stores.

Now, those are the five elements of count 1, each one of which must be proved to your satisfaction beyond a reasonable doubt before there can be a conviction as to count 1.

The statute which defendant Massiah is alleged to have

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violated in court 2 reads as follows, in pertinent part: It is unlawful to import or bring any narcotic drug into

the United States except such amounts as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate use.

Whoever fraudulently and knowingly imports or brings any narcotic drug into the United States contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, or conspires to commit such an offense shall be punished.

Now, that is the statute which is involved in count 2.

In order to find the defendant Massiah guilty of count 2 you must find beyond a reasonable doubt proof of every element of that crime. Those elements are, first, that on May 6, 1958, the defendant Massiah either received, or concealed, or sold, or in any manner facilitated the transportation or concealment of a narcotic drug;

Second, that the substance marked as Government's Exhibits 9 and 11—those are, again, the after peak disclosures

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—are narcotic drugs;

Third, that these narcotic drugs were illegally imported into the United States;

And fourth, that the defendant knew that these narcotic drugs had been illegally imported into the United States.

Each one of these elements of count 2 of the offense charged in count 2 must be proved to your satisfaction beyond a reasonable doubt before there can be a conviction of the defendant Massiah as to count 2.

Now, as previously stated, it will be necessary for you to decide whether the Government has established the elements of illegal importation, and the defendant's knowl-

edge of illegal importation of the cocaine mentioned in count 2 of the indictment.

However, Title 21, U. S. Code, Section 174, provides further that whenever on trial for a violation of this section—and that is the section concerning count 2—the defendant is shown to have or to have had possession of a narcotic drug, such possession shall be deemed such evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

Thus, under the law possession of narcotics gives rise

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to an inference that the narcotics were imported contrary to law, and a further inference that the person in possession had knowledge of such unlawful importation. This means that you would be authorized to convict the defendant who didn't explain his possession of the narcotics or whose explanation you disbelieved.

The word "possession," as I have used it in this charge doesn't necessarily mean only actual physical possession of narcotics; it means also such control of narcotics as could be exercised through agents. In short, it is not necessary under the law for the Government to prove that the defendant had actual physical possession of the cocaine mentioned in the indictment. Proof of constructive possession or control is sufficient for you to invoke the statutory presumption which I have read to you.

The statute which Winston Massiah is accused of having violated in count 7 reads as follows:

It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package, and the absence of appropriate tax-paid stamps from narcotic drugs shall be prima facie evidence of a violation

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of this sub-section by the person in whose possession the same may be found.

In order to find the defendant Winston Massiah guilty of the crime convinced beyond a reasonable doubt as to each of these elements of the offense.

First, that on or about May 6, 1958, in the Southern District of New York, he either purchased, sold, dispensed, or distributed a narcotic drug;

Second, that the substances marked Government's Exhibit 9 and Government's Exhibit 11 are narcotic drugs;

And third, that he didn't purchase, sell, dispense or distribute the narcotic drug in or from the original stamped package.

As I have already stated, the first element of this offense is that the defendant Massiah either purchased, sold, dispensed or distributed a narcotic drug. As to this element you are instructed that it is not necessary for you to find that the defendant did all of these prohibited actions. If you are convinced beyond a reasonable doubt that he did any one of them and you find that the elements exist, you are authorized to convict.

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Also, as previously stated, the third essential element of the crime charged is that you find beyond a reasonable doubt that the defendant Massiah didn't purchase, sell, dispense or distribute the narcotic drug in or from the original stamped package. In this regard I charge you that Section 4704(a) of the Title 26 of the United States Code provides that the absence of appropriate tax-paid stamps from narcotic drugs shall be prima facie evidence of a violation of this sub-section by the person in whose possession the same may be found.

Again, under this count the word "possession" as I have used it doesn't necessarily mean only actual physical possession; it also means such control of narcotics as may be exercised through agents. In other words, it includes constructive possession as well.

Now, that brings us to count 8. We are finished with counts 1, 2 and 7. This brings us to count 8, which is the conspiracy count. Section 371 of Title 18 of the United States Criminal Code provides, in part:

> "If two or more persons conspire to commit any offense against the United States, and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished as provided by law."

That is the conspiracy statute which is the offense announced in the Criminal Code and which is the offense charged in count 8 of this indictment.

The conspiracy alleged in this indictment is to violate Sections 173 and 174 of Title 21, and the pertinent parts of those statutes read:

> "It is unlawful to import or bring any narcotic drug into the United States except such amounts as the Commissioner of Narcotics finds to be necessary for medicinal purposes. Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of such narcotic drug after importation, knowing the same to have been imported illegally, or conspires to commit any such action in violation of the laws of the United States, shall be punished."

You will note that the conspiracy charges in count 8 relate also to the same substantive offense which is the basis of count 2. That is the illegal importation and dis-

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tribution of narcotic drugs.

A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. Thus a conspiracy is a kind of partnership in criminal purposes in which each member becomes an agent of every other member.

The gist of the offense is a combination or agreement to violate or disregard the law. Mere similarity of conduct among various persons, and the fact that they may have associated with each other, and may have assembled together, and discussed common aims and interests doesn't necessarily establish proof of the existence of a conspiracy. However, the evidence need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be achieved.

What the evidence must show in order to prove that a conspiracy existed is that the members in some way came to a mutual understanding to try to accomplish a common

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and unlawful plan. It is not necessary for the prosecution to prove that all the means or methods set forth in the indictment were agreed upon to carry out the conspiracy, or that all the means or methods were actually used or put into operation. But it is necessary that the evidence establish to the satisfaction of the jury that one or more of the

means or methods described in the indictment was agreed upon to be used in an effort to accomplish some object or purpose of the conspiracy as charged in the indictment.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy or of all of the conspirators.

On the other hand, a person who has no knowledge of a conspiracy but happens to act in a way which furthers an object or purpose of the conspiracy doesn't thereby become a conspirator. Before a jury may find that a defendant or any other person has become a member of a conspiracy the evidence must show that the conspiracy was formed and that the defendant or other person who is claimed to have been a member knowingly and wilfully participated in the unlawful plan with the intent to advance and further some object or purpose of the conspiracy.

To participate knowingly and wilfully means to partici-

—1826—

pate voluntarily and understandably and with specific intent to do some act which the law forbids, or with specific intent to fail to do some act which the law requires to be done; that is to say, to participate with bad purpose either to do bad or to disregard the law. So if a defendant or any other person with understanding of the unlawful character of a plan intentionally encourages, assists, advises, for the purpose of furthering the undertaking or scheme, he thereby becomes a knowing and wilful participant in the scheme, a conspirator.

The question of intent, the intention to be a conspirator, is a matter for you to determine. And as intent is a state of mind and it is not possible to look into a man's mind to see what he is thinking, the only way you have of arriving at intent in this case, or in such case, is for you to take

into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all the circumstances and facts what the intent of the defendants was at the time in question.

Thus direct proof of wilful or wrongful intent or knowledge is not necessary. Intent and knowledge may be in-

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ferred from acts and such circumstances as may arise from a combination of acts although each act, standing by itself, may seem unimportant. These are questions of fact to be determined from all of the circumstances.

One who knowingly and wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the instigators of the conspiracy.

In determining whether or not a defendant or any other person was a member of a conspiracy the jury isn't to consider what others may have said or done; that is to say, the membership of a defendant or any other person in a conspiracy should be established by evidence as to his own conduct, what he himself said or did.

If and when it appears from the evidence that a conspiracy existed, and that a defendant was one of the members, then the acts thereafter knowingly done, and the statements thereafter knowingly made by any person likewise found to be a member may be considered by the jury as evidence in the case as to any defendant found to be also a member of the conspiracy even though the acts and statements may have occurred in the absence and without the

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knowledge of the defendant, provided such acts and statements were knowingly done and made during the continuance of the conspiracy and in furtherance of the object or purpose of the conspiracy. Otherwise any admission or in-

criminatory statement made outside of court by one person may not be considered as evidence against any person who was not present and did not hear the statements made.

The arrest of one of several co-conspirators effectively terminates the arrested conspirator's participation in the conspiracy.

Statements made by such a person after arrest bind only him, the person making the statement. They may not be considered in determining the guilt or innocence of other persons not specifically joining in such statements.

Also, the arrested member or members of the conspiracy are only bound by those acts and declarations of their co-conspirators made prior to their arrest. However, the unarrested conspirators are bound by the acts and declarations of the unarrested co-conspirators made in furtherance of the conspiracy if such acts and declarations were made at any time during the existence of the conspiracy.

In your consideration of the evidence as to the offense of

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conspiracy charged you should first determine whether or not the conspiracy existed as alleged in the indictment. If you conclude that such a conspiracy did exist, you should next determine whether or not the defendants knowingly and wilfully became members of the conspiracy.

If you find that the evidence beyond a reasonable doubt is that the conspiracy was knowingly and wilfully formed as alleged in the indictment, and that the accused on trial knowingly and wilfully became members of the conspiracy at the inception of the plan or afterwards, and that thereafter one or more of the conspirators knowingly committed, in furtherance of the conspiracy, one or more of the overt acts charged, then the success or failure of the conspiracy to accomplish the common purpose is immaterial.

Charge of the Court

By the term "overt act" is meant any act committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature if considered separate and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, or driving an auto-

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mobile, or using a telephone. It must, however, be an act which follows and tends toward the accomplishment of a plan or scheme, and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

In order to establish the offense of conspiracy charged in this indictment the evidence must show beyond a reasonable doubt, first, that the conspiracy described was formed and existed at or about the time alleged. Second, that the accused knowingly and wilfully became members of the conspiracy. Third, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment on or about the time alleged, at the time and place alleged. And fourth, that such overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

If you find from the evidence beyond a reasonable doubt that existence of a conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy as charged, proof of the conspiracy offense charged is then complete, and it is complete

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as to every member found by you to have been knowingly and wilfully a member of the conspiracy at the time the

overt act was committed regardless of which of the conspirators did the overt act.

Now, finally and in conclusion let me say that it is your duty to weigh the evidence carefully, dispassionately, calmly, and to reach a conclusion about the facts of the case which is wholly within your findings; the sole and only question for your consideration is whether the defendants are guilty or innocent of the offense on trial. If you are satisfied beyond a reasonable doubt that they are guilty, it is your plain duty to convict them.

If, on the other hand, you have a reasonable doubt about the matter, it will be equally your duty to acquit.

Now, all 12 of you must agree, whichever way you find. In other words, your verdict must be unanimous. You must consider each count separately; you must consider each defendant separately.

You must determine first whether the defendants on trial are the defendants named in the indictment. And if you find that they are, you will then decide whether or not they

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are guilty of the offense charged in the indictment.

You will take up count 1 first. Winston Massiah is the only defendant named in count 1 and on trial on count 1. You will decide whether he is guilty or innocent. The form of your verdict may be "We the jury find the defendant Massiah guilty on count 1," or "We the jury find the defendant Massiah not guilty on count 1."

Then you will proceed to a consideration of count 2 of the indictment, and there, again, you will make a determination as to the guilt or innocence of the defendant Massiah, since he is the only defendant on trial as to count 2.

Then you will proceed to count 7 of the indictment, and again you will make the same determination of guilt or

innocence as to the defendant Massiah since he is the only defendant on trial as to count 7.

In proceeding to count 8 you will find four defendants on trial charged with conspiracy as outlined in the indictment. You will take each defendant separately. You will determine whether or not these defendants on trial are the

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defendants named in the indictment, and if you find that they are, then you will proceed to decide whether or not they are guilty of the charge in the indictment, that is count 8. As I have stated, you will take each defendant separately.

The form of your verdict as to count 8 should be "We the jury find the defendant Winston Massiah guilty," or "We the jury find the defendant Winston Massiah not guilty on count 8." And then the same with reference to Mitchell Anfield, guilty or not guilty, specifically as to him, specifically as to count 8; and then Icky Thorn, specifically as to him, specifically as to count 8; and then Leonard Aiken, specifically as to him, specifically as to count 8.

The court will give you a copy of the counts of the indictment which are on file here to assist you in your deliberation.

Unless the jury requests exhibits or testimony of any kind it will not be furnished to the jury. The jury should first try to determine the case on the basis of your total recollections of the exhibits and the testimony, and if you want assistance from either or both, on request you may have it. You will write your requests or any other messages

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that you have for the Court on a piece of paper which will be provided by the deputy marshal, and he will make this communication available to the Court.

(In the robing room.)

The Court: Are there any exceptions to the charge?

Mr. Somers: Just this, your Honor: I noted in your charge to the jury with respect to Winston Massiah that you mentioned both in connection, I believe, with the possession, and with the failure of the stamps on the tax count, that that in and of itself, if unexplained, may indicate the guilt of the defendant.

In connection with that, Judge Wright, I should very much appreciate it if you would instruct the jury that the defendants are not called upon at any time to take the stand, and even though that may make a prima facie case against them which, if unrebutted, they may decide doesn't raise a reasonable doubt, they can not make any inference whatsoever from his failure to take the stand, as to his innocence or guilt.

Am I a little verbose in that, Judge Wright?

The Court: I think your point will be made more simply

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and more clearly to the jury if I tell the jury that no inference whatever should arise from the fact that the defendants didn't take the witness stand, that they have a right to remain silent, and put the government to full proof.

Mr. Somers: That is right. That the burden, at all times —I think in that respect it was a little equivocal there. The jury may say, "Well, he had a right to explain this and his mere failure to do so—"

The Court: All right, I will do that.

Mr. Somers: And then to instruct the jury that the failure on the part of the government to produce a witness available only to the government might raise an inference

on the part of the jury that if the government had called such witness solely available to the government, his testimony would have been unfavorable to the government.

The Court: I will deny that.

Mr. Somers: You will deny that?

The Court: Yes. The reason is that I don't know of any witness who was available to the government alone.

Mr. Carluccio: You mean we could have brought Massiah

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in?

Mr. Somers: No. Colson.

I suppose we could on a writ.

The Court: There is no question about that.

Mr. Somers: One other thing, your Honor, that if the jury finds, after due deliberation, that the evidence equally points to the possibility that the defendant named as Leon in the indictment might be Leon known as Schoolboy Ellis, or Leonard Royal Aiken, they must acquit.

The Court: Well, I will deny that, too. I think I have covered it and you argued it very well, so I think I have covered it without pointing it up.

Mr. Somers: Judge, you see, you and I know so much more about these things than the jury does. This is a brand new jury. I don't think it would hurt, and I think it is proper if you would tell them, in your own language, that if they find, during the course of their deliberations, that this might have been Leon Schoolboy Ellis named in the indictment, since it is so vague and only by description, or it might have been Leonard Royal Aiken, then they must acquit because they are not convinced beyond a reasonable doubt that this defendant mentioned in the indictment is Leonard Royal Aiken.

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The Court: I think I have covered it.

What is your next point?

Mr. Somers: That is all, Judge.

Mr. Archer: The only point I wanted to make is already covered by Mr. Somers.

Mr. Carluccio: Your Honor, I think it was request 17—I looked—of Mr. Starkey's requests—which has a point that is sort of irreconcilable. You say at one point that they have no duty to come forward, and at the next point you say that he has a duty to explain it away, but I think the point that I would like to make is that the first question is whether Massiah possessed it, and that is the question that the jury has to determine.

And in addition, when you said "constructive possession through agents," I go along with constructive possession, but there is no proof whatsoever that he possessed it through agents. So I would request from your Honor sort of an amplification of this point in your charge, that there is no burden upon the defendant to come forward, that you make some mention to say that, anything said heretofore notwithstanding, or that you will clarify this point because both Mr. Somers and I didn't see any

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incongruity in that situation.

The Court: My feeling is that I should handle it broadly in the way I have indicated to Mr. Somers, and tell the jury, in effect, that the fact that the defendants didn't take the stand must not give rise to any inference whatsoever, and they have a right to remain silent and put the goverment to full proof, and no inference should arise from the fact that they have not taken the stand, and I think that makes your point. To get into this you get all involved.

Mr. Carluccio: Although it seems incongruous, but unless you could make it with reference to Massiah, unless you also add the point that in order for him to—no, then you will have to talk about possession. If you make that point strong enough, your Honor—

The Court: Let me ask you this. This is what I was thinking about: I had hoped they would take these names out of the indictment, but I thought I would let the jury have this.

Mr. Somers: That is entirely satisfactory to me, your Honor.

The Court: There is no change otherwise. It is a clean indictment.

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Mr. Starkey: I would offer my apologies, your Honor. When you requested that the names be stricken, I didn't understand the Court to mean excised.

The Court: Do you have any point about the charge?

Mr. Starkey: No, your Honor, I don't. I had in mind a possible amplification on a witness who was in jail being available to both sides, but I don't think it is necessary.

The Court: All right, gentlemen, thank you very much.

(In open court.)

The Court: Ladies and gentlemen, as you were told at the outset of this trial that under our law defendants are presumed to be innocent, no inferences are to arise in any way from the fact that they have not taken the stand. Under our law the government has the burden of proving guilty beyond a reasonable doubt, and the defendants have a right, under our law, to rest on that presumption, and consequently no inference whatever can arise from the fact that the defendants failed to take the stand. They

have a right to remain silent and put the government to

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the full proof. So the fact that the defendants haven't taken the stand must not give rise to any inference for or against them.

You may now retire.

Swear the deputy marshals.

(Marshals sworn.)

(Whereupon, at 11:45 o'clock a.m. the jury retired to start its deliberations.)

The Court: Mrs. Goldberg and Mr. Roboff, I should like to take this opportunity to thank you for sitting through this trial. That is rather a bromide, but "Those also serve who only sit and wait."

It is perfectly obvious that we had to have you in a trial of this length where anything could happen by way of sickness to a juror and as a consequence we would need to have a substitute in the event one was not able to continue. I realized, after listening to the case, perhaps you would have some indication between yourselves as to whether or not you should be allowed to go forward with the case. It is kind of bringing you up to the mountain and showing you the promised land and then not letting you get to it.

I want to thank you for your conscientious efforts and

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you are excused without date.

(Two alternate jurors excused.)

(11:42 o'clock p.m. the jury sent out the following note:)

The Court: We have a note from the jury reading as follows:

Jury's Requests for Additional Instructions

"The jury would like to see the indictment."

So, if it is agreeable to counsel, I will simply have the deputy take the indictment in.

Make the message from the jury the next Court's exhibit.

(Court's Exhibit 22 marked for identification.)

(2:50 p.m. In the robing room.)

The Court: The jury has sent the following note to the court:

"May the jury see that portion of the transcript or hear that portion of it read that covers Massiah's conversation with Colson's car."

Now, will counsel state their positions with reference to the request of the jury?

Mr. Carluccio: I state for the defendant Massiah that I request that this portion not be read to the jury because it overemphasizes a portion out of perspective with the

—1842—

other portions of the testimony. The recollection of the jury is what controls, as your Honor has charged, in addition to which this particular portion, notwithstanding the fact that it is derogatory to the defendant Massiah, was vehemently questioned as to its admissibility in evidence.

This was a conversation by a government informer in furtherance of the government by way of what I call entrapment, with a small "e", so by virtue of the testimony it shouldn't be given, and it would put it all out of context.

The Court: The position of the defendant Thorn?

Mr. Archer: Well, I will go along in support of the contention made by the attorney for the defendant Massiah

and further state that I don't recall having voiced any opinion with reference to admitting any papers or relevant portions of the minutes with the other attorneys if they did make such arrangement with the U. S. Attorney.

The Court: Now for the defendants Anfield and Aiken.

Mr. Somers: On mature deliberation I join in the application of the other counsel that the jury recall this testi-

—1843—

mony as best it may without requesting or without the granting of any request on the part of the jury to have the stenographer read any particular portions of the testimony because I feel with counsel that that does unduly emphasize those particular references in reference to the whole of the testimony and that it would be unduly prejudicial and its probative value would be far outweighed by such possible prejudice.

The Court: The government's position?

Mr. Starkey: In the first instance, your Honor, on this question of reading to the jury the transcript of the testimony which becomes of importance in their deliberation, in light of the fact that this question was raised before the jury during my summation, at that point all counsel agreed that they should be permitted to hear such testimony in front of the jury, in the first instance, and I think that if they are not permitted to hear it they are entitled to know the reason why on this occasion, namely, that defense counsel have shifted their position and do make an objection of this kind.

In the second instance I think that, notwithstanding this change of position and this objection on the part of

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the defense, that the jury is deliberating and is entitled to whatever tools and instruments they might reasonably

use in an effort to facilitate their deliberations in their endeavors to reach a verdict, that it is customary practice in the Southern District of New York to permit them to have portions of the testimony concerning which doubts have been raised read back, and that if they have enough need of a clarification of that testimony to make a specific request in writing to the court, that the court, in the wise exercise of its discretion, should permit them the help they need under the circumstances.

I think that the rule or the practice of reading back testimony is no more unreasonable and no more unusual than that of permitting them any exhibits in the jury room which went into evidence which would facilitate their deliberations insofar as a verdict is concerned, and that the same rule and the same reasoning should be adopted insofar as this testimony is concerned.

The Court: Well, I understand that it is the uniform practice in the Southern District to read parts of the transcript to the jury. However, I am not aware of any case which allows the reading over the objection of counsel

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representing the defendants. It would seem to me that the advisability and desirability of reading back the transcript can be argued both ways: One, the reading could help the jury decide the case. On the other hand, however, it may be that reading only a part of the transcript to the jury and not the whole transcript to the jury might emphasize unduly that part which is read, and in view of the fact that counsel representing all the defendants are opposing the reading of the transcript to the jury, the jury is going to be advised that counsel have not been able to agree on the reading of the transcript, and con-

sequently the request of the jury will have to be denied with the suggestion that they recall the evidence for themselves.

I am not going to say that the defense counsel oppose it; I am simply going to say that counsel cannot agree, and the reason why I am saying that is, as counsel for the government stated, that there did seem to be some measure of agreement, at least as to reading some part of the transcript, and the Court, in its charge to the jury, did indicate that these portions of the transcript would be read to them if requested.

So I believe that it would be necessary, in these cir-

cumstances, to tell the jury why their request is being denied without saying which side or which counsel are opposing it.

Mr. Somers: Don't you think, your Honor, that justice would be best served if you just said that—if you just asked them to resort to their best recollection from memory rather than even mentioning that there has been opposition by counsel to its introduction?

Mr. Carluccio: The logic of Mr. Somers' remark is that if the testimony obviously would be derogatory to the defendants, especially to Massiah, it could be well inferred that one of the defense counsel would be against it and not government counsel.

Mr. Somers: Specifically since it was offered by the government and obviously these men—some of them who are of average intelligence, at least, can figure out that the government intends to stand by it, and if counsel objects to it the objecting counsel must be the defense.

I think it would be best if they were just told that they were to resort to the best recollection that serves them.

Jury's Requests for Additional Instructions

Mr. Carluccio: We will go by that ground rule, though,

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that on agreement we would try to agree in the future as each thing comes up—

Mr. Somers: No. I would suggest that the ruling be constant throughout the trial, that their best memory serve them.

Mr. Starkey: Your Honor, in this regard the government would take violent exception to the defense, and specifically defense counsel having the benefit of an exhibition of the kind that occurred before the jury of agreement that testimony be read back, and then a refusal to do so, and lack of an explanation being given as to the reason for it.

Mr. Somers: No, I can't go with that. All the Court has to do is to tell them that it is in the Court's discretion. The Court feels that the best interests of justice would be preserved if their memory prevailed.

Mr. Starkey: Counsel did say in front of the jury that they would have no objection, and now the jury isn't going to have what was agreed they should have at that time.

Mr. Carluccio: I believe it is necessary to at least tell the jury that counsel haven't been able to agree about the reading of the transcript because there did seem to be

—1848—

some measure of agreement between counsel as to the reading of the transcript. And in the Court's charge it did say to the jury that the transcript would be made available to them, so I would think that some reason for not reading the transcript now is required.

Mr. Somers: Your Honor might be able to best serve that by mentioning that this is a three weeks trial and if they are going to ask for testimony every few minutes

we might have to go through the whole three weeks all over again.

Mr. Archer: I think we ought to leave it up to your Honor to explain it to the jury.

Mr. Somers: If you say that counsel can't agree they must understand by that that this is an offer of government testimony, that the dissenting counsel certainly is not the government, it must be the defense and I think that would just defeat its purpose in telling them that, Judge.

You might just as well say that "I can't let him read this because of objection by defense counsel." It is saying it in a little bit different way, a little bit more euphemistically, perhaps, but I am sure they will grasp the fact that counsel who are objecting are the defense counsel.

—1849—

I think in fairness if your Honor just says that you feel that they should resort to their best memory, it will serve their purpose, and nobody will be prejudiced, despite Mr. Starkey's talk about vehement exhibitions.

Mr. Starkey wanted this opportunity for the jury to examine the records, I said it would be okey, and now you say it's best that they resort to their best memory and that way they can't be mad at Starkey or at me, either the government or the defense.

Mr. Starkey: I would object to the jury being misled in that regard. It was the judge's decision.

Mr. Somers: Well, if the judge hadn't brought that point to my attention—I am very grateful for it—I feel that he is absolutely right in that respect, that this taking it out of context does unduly pinpoint certain precise portions of the testimony that unduly prejudice the defendants because they can't read the whole testimony and have the

proper perspective with respect to the particular pinpointed testimony that they asked for.

Mr. Starkey: I submit to the Court, your Honor, that, although I don't have cases at hand, that this is a question

—1850—

of the Court's discretion, and that it would be an abuse of discretion to constitute error in this instance, that clearly—

The Court: Just a moment. We have another note from the jury.

> "May the jury see the portion of the transcript and hear that portion of the transcript that covers the information given to the customs officers by Torres."

Mr. Somers: Apparently they are considering Massiah throughout here at this point.

Mr. Carluccio: Your Honor, I think maybe we should clear up that point about whether there was an agreement to read certain portions. I think Mr. Somers said something about his man Leon, and maybe Mr. Pogoda might have said something about it.

Mr. Somers: I did, about Leon Aiken.

Mr. Carluccio: I didn't join in it, and if that was the situation I am sure that Mr. Somers wouldn't object to that portion if it is only that one portion, but I think on other portions—

The Court: Is the position of all counsel the same with respect to the second request to read the transcript?

—1851—

Mr. Carluccio: Yes, your Honor, especially so because with Torres there is a statement to the customs official that was marked for identification and never put in evidence.

Mr. Starkey: I submit, your Honor, that there is no question that a reading of testimony would be error any

more than there is question that submission of exhibits upon request to the jury would be error, and that, the objection of defense counsel notwithstanding, the Court should properly give the jury the tools it requests in furtherance of its deliberations.

The Court: Well, I am going to deny the request, so let's get on the bench.

(The following proceedings took place in open court.)

(Jury present.)

Mr. Starkey: Your Honor, with regard to the conversation just had, may I approach the bench with counsel?

The Court: All right, step up.

(The following proceedings took place at the bench.)

Mr. Starkey: Your Honor, I have a suggestion at this point which I think may well meet the objection raised by

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defense counsel insofar as the reading of the government's evidence concerning these conversations, and that is that —had it occurred at the time the testimony actually was given—cross-examination as well as direct examination concerning these matters be read to the jury and that way defendants will not be deprived of any rights, nor be the victims of any prejudice any more than they were at the time the testimony was actually taken.

Mr. Somers: We object to it, your Honor.

Mr. Archer: It will be like trying over the case.

Mr. Carluccio: And not only cross-examination, but you would also have to bring in the summation.

The Court: All right, same ruling.

Jury's Requests for Additional Instructions

(In open court.)

The Court: Ladies and gentlemen, the Court has considered the requests which have been made to read the transcript, and even though the Court did indicate in its charge that if the jury wanted parts of the transcript read, it would have those parts read to the jury, it is the Court's feeling now that to read certain parts of the transcript and not read the entire transcript would be to un-

—1853—

duly emphasize that part which was read, and consequently the Court feels that the jury should take the time to recall the evidence the best it can from having heard the evidence and come to a conclusion in this matter based on hearing not only the evidence which the jury wants reread now, but all of the evidence in the case.

Now, I am very reluctant always to deny a request of the jury, but I think that you will understand that if we get to reading parts of the transcript, perhaps we ought to read the entire transcript because there may be some parts that are read and consequently the parts not read wouldn't be fresh in the minds of the jurors like the parts that are read to the jury.

So with that explanation the Court is going to ask the jury to retire again and to recall this evidence for itself, and I think you can recall it for yourself, but I think the Court has a definite recollection about this evidence and I am sure that you all have definite recollections about the evidence, and I think that if you can thrash it out along with the other evidence that is in the case and come to a verdict as to each one of these counts in the indictment it would be better to do it that way.

Jury's Requests for Additional Instructions

—1854—

So with that explanation the Court would ask the jury to retire again and reconsider the four counts of this indictment on trial here.

(Whereupon, at 3:12 o'clock p.m. the jury retired to resume its deliberations.)

The Court: Let the two notes with their envelopes be made a part of the record as Court's Exhibits.

(Court's Exhibits 23 and 24 marked for identification.)

(4:45 o'clock p.m. in the robing room.)

The Court: We got another request from the jury.

"May the jury see the warrants or the warrant and the complaint entered in evidence for arrest of Leon Aiken and Leon Ellis?"

Mr. Starkey: Fine.

The Court: Now, what is in evidence on that?

Mr. Starkey: Exhibit 33.

The Clerk: The copy of the complaint is Government's Exhibit 24, and the warrant of arrest is Government's Exhibit 33.

The Court: In evidence?

—1855—

The Clerk: That is on Aiken, the warrant of arrest, and the copy of the complaint is on Ellis, Exhibit 24, your Honor.

The Court: What is the position of counsel with reference to this request?

Mr. Somers: I feel, your Honor, that this, too, should be accorded the same treatment. It should be treated in the same manner as your Honor felt about the reading of specific portions of the testimony.

The Court: What is your position?

Mr. Archer: Well, I will go along with Mr. Somers. I concur with him that we should follow the previous ruling on this point.

The Court: What is your position?

Mr. Carluccio: Your Honor, being that it concerns Mr. Somers I think whatever he says on it I will go along with.

The Court: And the government's is what?

Mr. Starkey: The government's position, your Honor, is that the jury is entitled to see the exhibits, that they weren't shown exhibits during the course of the trial for the precise reason that they would be available to them during their deliberations in the jury room. They have been told they are entitled to them and I submit the ex-

hibits should be sent to them.

The Court: The Court is going to comply with the jury's request and I think the record protects your position.

(The following proceedings took place at 4:55.)

The Court: As I understand it, all counsel are here in chambers, and counsel agree that rather than bring the jury back to hand them these documents the documents can be handed to them by the deputy marshal. Is that the understanding of counsel?

Mr. Carluccio: Yes, your Honor.

The Court: And let the jury's message and its enclosure be marked the next Court exhibit.

(Court's Exhibit 25 marked for identification.)

The Court: If it is agreeable to counsel for the government and counsel for the defendants, the documents will be handed to the jury by the marshal, the deputy

marshal with the instruction that the exhibits should be inspected on both sides.

Mr. Somers: Thank you, Judge.

Mr. Carluccio: That is good.

The Court: Mr. Marshal, will you hand these two docu-

—1857—

ments, Government's Exhibits 33 and 34, to the jury, and advise them that they should inspect both sides of the documents?

(The following proceedings took place in open court at 5:40 o'clock p.m. in the presence of the jury.)

The Clerk: Mr. Foreman, has the jury agreed upon a verdict?

The Foreman: We have.

The Clerk: How do you find?

The Foreman: We the jury find the defendant Winston Massiah guilty on count 1.

We the jury find the defendant Winston Massiah guilty on count 2.

We the jury find the defendant Winston Massiah guilty on count 7.

We the jury find the defendant Winston Massiah guilty on count 8.

We the jury find the defendant Mitchell Anfield guilty on count 8.

We the jury find the defendant Icky Thorn guilty on count 8.

We the jury find the defendant Leonard Aiken guilty on count 8.

—1858—

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find the

defendant MaMssiah guilty on counts 1, 2, 7 and 8; you say you find the defendant Anfield guilty on count 8; you say you find the defendant Thorn guilty on count 8, you say you find the defendant Aiken guilty on count 8, and so say you all?

(All nodded in the affirmative.)

(The jury was polled.)

The Court: Let the record show that it is the verdict of each and every juror. The Court knows that this is the last time you are going to be serving at this term and I want to express to you on behalf of the judges of the Southern District of New York the appreciation of the Court for the conscientious manner in which you have conducted yourselves as jurors.

The sincerity of purpose which you have demonstrated, and the seriousness of purpose which you have demonstrated in undertaking your duties as jurors is commendable. We know that taking up your time is a burden, too, particularly those of you who live outside of Manhattan.

However, it is always an inspiration for me to work

—1859—

with a jury. I have been working with juries for 25 years and every time I work with a jury, with very few exceptions, I am convinced once again that our way is the right way to handle matters of this kind.

You are excused now without a date with the thanks of the Court.

(Jury excused.)

* * * * *

Motions to Set Verdict Aside
Sentence

Mr. Somers: I now move on behalf of Leonard Royal Aiken to set aside the verdict of the jury on the law and on the evidence and for a new trial.

The Court: That motion is also denied.

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—1879—

With reference to the defendant Aiken, the sentence is that you serve 13 years on count 8.

• • • • •

Government's Exhibit 33

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 61Cr.206

UNITED STATES OF AMERICA,

—v.—

JOHN DOE a/k/a LEON, meaning thereby to describe a Negro male of medium complexion, with black hair and a medium build, approx. 40 yrs. old approx. 5'9" tall & weighing approx. 165 lbs.

To any United States Marshal or any other authorized officer.

You are hereby commanded to arrest JOHN DOE a/k/a LEON and bring him forthwith before the United States District Court for the Southern District of New York in the city of New York to answer to an indictment charging him with conspire to sell unlawfully imported cocaine etc. in violation of Ti.21 USC § 173, 174.

HERBERT A. CHARLSON
Clerk

By /s/ ELSIE M. EILER
Deputy Clerk

Dated at New York, N. Y.
on March 3, 1961.

Bail fixed at $.....

RETURN

District of ss

Received the within warrant the 13 day of May 1961 and executed same.

FINBARR J. MURPHY